

VOLUME 1

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE YVONNE GONZALEZ ROGERS, JUDGE

IGNACIO PEREZ, ON BEHALF)	
OF HIMSELF AND ALL OTHERS)	
SIMILARLY SITUATED,)	
)	
PLAINTIFFS,)	NO. C-16-3396 YGR
)	
VS.)	MONDAY, MAY 6, 2019
)	
RASH CURTIS & ASSOCIATES,)	OAKLAND, CALIFORNIA
)	
)	JURY TRIAL
DEFENDANT.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

BURSOR FISHER, P.A.
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BY: TIMOTHY FISHER, ESQUIRE
YEREMEY O. KRIVOSHEY, ESQUIRE
BLAIR REED, ESQUIRE

BURSOR & FISHER
2665 S. BAYSHORE DR.
MIAMI, FLORIDA 33133
BY: SCOTT A. BURSOR, ESQUIRE

FOR DEFENDANT:

ELLIS LAW GROUP LLP
1425 RIVER PARK DRIVE, STE. 400
SACRAMENTO, CALIFORNIA 95815
BY: MARK E. ELLIS, ESQUIRE
ANTHONY P.J. VALENTI, ESQUIRE
LARRY IGLESIAS, ESQUIRE

REPORTED BY:

DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
OFFICIAL COURT REPORTER

TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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1 MONDAY, MAY 6, 2019

8:00 A.M.

2 P R O C E E D I N G S

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE PROSPECTIVE
4 JURORS.)

5 **THE COURT:** GOOD MORNING.

6 **MR. ELLIS:** GOOD MORNING.

7 **MR. BURSOR:** GOOD MORNING, YOUR HONOR.

8 **THE CLERK:** ALL RIGHT. CALLING CIVIL ACTION 16-3396
9 IGNACIO PEREZ VERSUS RASH CURTIS & ASSOCIATES. COUNSEL,
10 PLEASE STATE YOUR APPEARANCES.

11 **MR. BURSOR:** GOOD MORNING, YOUR HONOR. SCOTT BURSOR
12 FROM BURSOR AND FISHER. WITH ME TODAY, THOUGH THEY ARE NOT --
13 THEY ARE COMING FROM THE ATTORNEY LOUNGE, ARE MY PARTNERS TIM
14 FISHER AND YEREMEY KRIVOSHEY AND OUR ASSOCIATE, BLAIR REED.

15 **THE COURT:** OKAY. GOOD MORNING.

16 **MR. ELLIS:** GOOD MORNING, YOUR HONOR. MARK ELLIS,
17 ELLIS LAW GROUP, LLP, ON BEHALF OF DEFENDANT, RASH CURTIS.
18 AND WITH ME, AS ALWAYS, IS MR. VALENTI, ONE OF MY ASSOCIATES,
19 AND MR. IGLESIAS, ONE OF MY ASSOCIATES, AND ROBERT KEITH, WHO
20 WILL BE THE REPRESENTATIVE. HE'S THE VICE PRESIDENT OF
21 OPERATIONS AT RASH CURTIS. AND, WHILE NO ONE ELSE IS IN THE
22 COURTROOM, WE ALSO HAVE ADAM WILLIAMS, WHO WILL BE HERE DURING
23 THE TRIAL. HE IS A REPRESENTATIVE FROM THE INSURANCE COMPANY.

24 **THE COURT:** OKAY. ALL RIGHT. GOOD ENOUGH. GOOD
25 MORNING.

1 IN TERMS OF THIS MORNING, ARE THERE ANY QUESTIONS OR
2 ISSUES THAT YOU WISH TO DISCUSS? I WAS IN PRETTY EARLY, SO
3 I'M ASSUMING THAT THERE WAS A LINE OUTSIDE. I DIDN'T SEE IT
4 WHEN I CAME IN.

5 **THE CLERK:** THEY ARE ALL IN NOW.

6 **THE COURT:** I AM ASSUMING OUR JURORS ARE ALL IN,
7 GETTING PROCESSED AND WATCHING VIDEOS AND DOING THE
8 QUESTIONNAIRES.

9 BUT IN THE SHORT ORDER, ARE THERE QUESTIONS OR ISSUES TO
10 DISCUSS? I THINK I MENTIONED THIS BEFORE, MR. ELLIS YOU NEED
11 TO BE AT THE MIC BUT I WILL ALWAYS ASK FIRST THING IN THE
12 MORNING FOR THE LIST. I DON'T WANT TO HAVE ARGUMENT, I JUST
13 WANT THE LIST FIRST.

14 SO, WE'LL START WITH PLAINTIFFS ALWAYS. SIR.

15 **MR. BURSOR:** SO, YOUR HONOR, FOR THE PLAINTIFFS WE --
16 OUR ONLY QUESTION IS IF THE COURT HAS A VERDICT FORM AND IF WE
17 WILL SEE THAT BEFORE WE GIVE THE OPENING STATEMENT.

18 **THE COURT:** PROBABLY NOT.

19 **MR. BURSOR:** OKAY.

20 **THE COURT:** YOU SENT IT TO ME THIS WEEKEND. ONE OF
21 THE THINGS WE HAVE TO DO IS TRY TO MAINTAIN OUR DOCKET WHILE
22 WE ARE IN TRIAL, AND I DON'T HAVE TO GET TO THE VERDICT FORM
23 UNTIL THE END OF THE WEEK. SO I WILL GET IT TO YOU SOON AND
24 RESPOND BUT, FRANKLY, I WAS DEALING WITH MY OTHER CASES
25 BECAUSE I'M GOING TO BE DEALING WITH YOUR CASE MOST OF THE

1 WEEK.

2 **MR. BURSOR:** UNDERSTOOD, YOUR HONOR. SO THE
3 DEFENDANT MADE A SUBMISSION YESTERDAY THAT THE COURT DID NOT
4 INVITE.

5 **THE COURT:** OKAY. SO VERDICT FORM IS ONE THING.
6 ANYTHING ELSE TO TALK ABOUT?

7 **MR. BURSOR:** NOPE.

8 **THE COURT:** HOW ABOUT FROM THE DEFENSE?

9 **MR. ELLIS:** THE ONLY THING WE HAVE SEEN THE LIST OF
10 WITNESSES. WE GOT THAT THIS MORNING. AND THERE SEEMED TO
11 BE -- THERE MAY BE AN ISSUE WITH TWO OF THE WITNESSES,
12 MR. KIZER AND MR. KEITH. IT IS MY UNDERSTANDING THAT
13 PLAINTIFFS INTEND TOMORROW TO PLAY THEIR VIDEOTAPED OR
14 EXCERPTS FROM THEIR VIDEOTAPED DEPOSITION. NEITHER ONE OF
15 THOSE FOLKS ARE PARTIES AND I HAVE NOT SEEN ANYTHING THAT
16 WOULD INDICATE THEY ARE UNAVAILABLE TO TESTIFY THEMSELVES.
17 AND I THINK THIS COMES UP WHEN WE WERE HAVING OUR --

18 **THE COURT:** WELL, KEITH, IS VP OF OPERATIONS.

19 **MR. ELLIS:** NICK KEITH. BOB KEITH IS VICE PRESIDENT
20 OF OPERATIONS HERE BUT NICK KEITH IS THE IT MANAGER, AND HE
21 WAS NOT DISCLOSED AS A 30B WITNESS. WE WOULD HAVE NO
22 OBJECTION TO THE PLAYING OF THE 30B WITNESS BUT NEITHER
23 MR. KIZER NOR MR. KEITH -- I CAN SAY FOR SURE WITH NICK KEITH,
24 HE IS NOT UNAVAILABLE. SO --

25 **THE COURT:** OKAY. SO LET'S -- ANY OTHER ISSUES?

1 **MR. ELLIS:** NO. NO, MA'AM.

2 **THE COURT:** SO WITH RESPECT TO THE VERDICT FORM, I
3 DON'T KNOW WHAT HE SENT ME. ALL I KNOW IS I GOT SOMETHING.
4 REGARDLESS OF WHETHER IT WAS INVITED OR NOT, WHATEVER I WAS
5 GOING TO PRESENT TO YOU, I WAS GOING TO PRESENT TO YOU. I
6 DON'T EVER GIVE VERDICT FORMS OR JURY INSTRUCTIONS WITHOUT
7 TALKING TO THE PARTIES.

8 SO IF I -- IF HE SENT IT NOW, HE WAS GOING TO BE ABLE TO
9 SEND IT SOME OTHER TIME. SO, ANYWAY, I DON'T KNOW THAT THAT
10 ULTIMATELY MATTERS. PEOPLE ARE TRYING TO GET PREPARED AND
11 DEALING WITH THINGS. SO I WILL LOOK AT IT AND DEAL WITH IT
12 AND, OBVIOUSLY, INVITE YOUR COMMENTS AT THE APPROPRIATE TIME.
13 I DON'T KNOW THAT RIGHT THIS SECOND IS THE APPROPRIATE TIME,
14 GIVEN THAT I HAVEN'T LOOKED AT IT.

15 SECOND, NOW WITH RESPECT TO THE WITNESSES, YOUR COMMENT IN
16 RESPONSE?

17 **MR. BURSOR:** YOUR HONOR, WE DESIGNATED THE VIDEOTAPED
18 TESTIMONY, I BELIEVE IT WAS IN JANUARY, AND THERE WERE NO
19 OBJECTIONS TO IT AT THAT TIME. SO WE INTENDED TO PLAY THE
20 VIDEO OF THESE THREE WITNESSES. IT'S ABOUT HOUR AND-A-HALF
21 TOTAL, MAYBE AN HOUR, 45, AND THIS WAS DISCUSSED AT A PRIOR
22 HEARING WHERE WE WENT THROUGH THIS. THERE WERE NO OBJECTIONS.

23 **MR. ELLIS:** MAY I RESPOND, YOUR HONOR?

24 **THE COURT:** YOU MAY.

25 **MR. ELLIS:** SO THERE ARE NO OBJECTIONS TO THE CLIPS.

1 THAT'S WHAT WE WERE TALKING ABOUT. WHAT -- BUT IN TERMS OF
2 OTHER PROCEDURAL RULES, I MEAN, IF -- YOU SIMPLY, I DON'T
3 BELIEVE, CAN PLAY A VIDEO CLIP IF THE WITNESS IS AVAILABLE.
4 AND MR. KIZER IS AVAILABLE AND HE WILL BE TESTIFYING BECAUSE
5 WE SUBPOENAED HIM FOR FRIDAY MORNING. SO EITHER HE CAN SHOW
6 UP OR, I GUESS, BE HELD IN CONTEMPT. AND MR. NICK KEITH IS ON
7 OUR WITNESS LIST. AND HE WILL -- HE WILL BE APPEARING.

8 NOW, THE PLAINTIFFS HAVE NOT SUBPOENAED HIM WITH A RULE 45
9 TRIAL SUBPOENA, BUT MY REPRESENTATION IS THAT HE WILL BE HERE.

10 **THE COURT:** WELL, I DON'T KNOW WHAT IT IS YOU AGREED
11 TO AND IF YOU AGREED TO SOMETHING EXPLICIT. THE RULES ARE THE
12 RULES. AND IN TERMS OF MY OWN RULINGS, I HAVE TO USE THE
13 RULES TO BE FAIR.

14 SO, THE RULES ARE THAT YOU CAN PLAY ANY CLIP OR READ
15 ANYTHING FROM A PARTY OPPONENT, BUT THAT'S NOT THE CASE WITH
16 RESPECT TO SOMEONE WHO IS NOT. THERE HAS TO BE AN EVIDENTIARY
17 SHOWING AS TO WHETHER OR NOT THAT SHOULD BE THAT TESTIMONY,
18 WHICH IS NOT THE BEST TESTIMONY AS LIVE TESTIMONY, SHOULD BE
19 USED AS A SUBSTITUTE BECAUSE SOMEONE IS UNAVAILABLE.

20 SO -- AND IF THEY CAN'T, THEN IT'S THERE AND IT IS READY
21 TO GO. BUT YOU HAVE TO MEET THAT EVIDENTIARY HURDLE FIRST.

22 **MR. BURSOR:** YOUR HONOR, THESE ARE ALL EMPLOYEES OF
23 THE DEFENDANT. WHILE MR. KIZER IS A FORMER EMPLOYEE --

24 **THE COURT:** SO DO YOU HAVE LAW THAT SUPPORTS THAT?

25 **MR. BURSOR:** WE DIDN'T KNOW THIS WAS GOING TO BE AN

1 ISSUE. IT WAS RAISED FOR THE FIRST TIME TWO MINUTES AGO, SO
2 NO.

3 **THE COURT:** SO, THAT IS WHY WE ARE HERE, THAT IS WHY
4 WE HAVE TIME. YOU MAY WANT TO START RESEARCHING WHETHER THERE
5 IS AN EVIDENTIARY BASIS FOR BRINGING IT IN. AND I WILL LOOK
6 AS WELL AND TAKE A LOOK AT THE CASE LAW AND SEE WHAT THE CASE
7 LAW SAYS. OTHERWISE, I WILL DEEM HIM TO BE UNAVAILABLE IF HE
8 IS NOT HERE TOMORROW. CAN HE BE HERE TOMORROW? MR KEITH?

9 **MR. ELLIS:** SURE. HE CAN.

10 **THE COURT:** OKAY. WHY DON'T WE THEN -- IF THERE IS
11 NOTHING ELSE YOU WANT TO TALK ABOUT, WE WILL STAND IN RECESS
12 WHILE YOU RESEARCH THE TOPIC. LET ME KNOW IF YOU FIND
13 SOMETHING. WHEN I HEAR FROM THE JURY ROOM THAT WE HAVE JURORS
14 READY TO COME IN, I WILL LET YOU KNOW.

15 ANYBODY HAVE ANY FURTHER QUESTIONS ON JURY SELECTION? NO?

16 **MR. ELLIS:** I GUESS I DO. FOR SOME REASON I THOUGHT
17 I HEARD YOU SAY THAT WE ARE GOING TO HAVE FOUR PEREMPTORIES?
18 DID I MISHEAR THAT? IS IT GOING TO BE THE NORMAL THREE?

19 **THE COURT:** NO. I'M SEATING EIGHT. I GIVE YOU FOUR.

20 **MR. ELLIS:** OH, OKAY.

21 **THE COURT:** IT IS TYPICALLY THREE, BUT MY VIEW THAT
22 IS THREE OUT OF SIX AND I'M SEATING AN ALTERNATE -- I'M
23 SEATING EIGHT JUST IN CASE AND SO I GIVE YOU AN EXTRA ONE WHEN
24 I SEAT EIGHT.

25 **MR. ELLIS:** OKAY.

1 **THE COURT:** AND THEN -- DO WE HAVE THOSE? HAVE WE
2 GIVEN THEM TO THEM OR NOT?

3 WHAT I DECIDED TO DO AS I WENT BACK AND LOOKED AT THE
4 STIPULATED FACTS, IS I'M JUST READING WHAT YOU ALL DON'T
5 OBJECT TO. SO, THOSE ARE THE ONES THAT I AM READING.
6 EVERYTHING ELSE, TO THE EXTENT IT IS RELEVANT, YOU CAN PROVE
7 IT. YOU CAN JUST ASK QUESTIONS. BUT IN TERMS OF WHAT I READ
8 TO THEM AND WHAT IS IN THEIR BINDER, IT'S THAT SET OF
9 STIPULATED FACTS.

10 OKAY? SO WE WILL STAND IN RECESS. LET ME KNOW IF YOU
11 HAVE SOMETHING TO TALK ABOUT.

12 **MR. BURSOR:** CAN I ASK ONE MORE QUESTION?

13 **THE COURT:** SURE.

14 **MR. BURSOR:** A VERSION OF THIS IS GOING TO BE
15 PREPARED THAT IS GOING TO GO INTO THE JURY ROOM AT THE END OF
16 THE CASE?

17 **THE COURT:** WE ARE PUTTING IT STRAIGHT INTO THEIR
18 BINDERS, THAT THEY HAVE THEM.

19 **MR. BURSOR:** ARE THEY GOING TO HAVE BINDERS DURING
20 THE TRIAL?

21 **THE COURT:** YES. SO THEY WILL HAVE BINDERS. I'LL
22 REVIEW THEM WITH THEM AFTER THEY ARE SEATED. THE BINDERS HAVE
23 NOTEBOOK PAPER. THEY HAVE THE TRIAL SCHEDULE, IN TERMS OF THE
24 DAYS THAT WE ARE IN SESSION WHEN WE TAKE BREAKS. WHEN YOU
25 GIVE ME THEIR PICTURES, THEY NEED TO BE THREE-HOLE PUNCHED SO

1 THEY CAN GO INTO THE TRIAL BINDER. THEY HAVE A BLANK FORM FOR
2 PURPOSES OF ASKING QUESTIONS, IF THEY WANT TO SUBMIT
3 QUESTIONS.

4 AND THEN THEY WILL GET A SECOND -- AND THEN THEY WILL GET
5 A BINDER -- ACTUALLY WE JUST GIVE THEM THE SHEETS OF THE
6 CLOSING INSTRUCTIONS. I GIVE THEM HARD COPIES OF CLOSING
7 INSTRUCTIONS, NOT OF PRE-INSTRUCTIONS BUT OF CLOSING
8 INSTRUCTIONS. SO THOSE WILL GO INTO THEIR BINDER AT THE END
9 OF THE CASE. THIS THREE-PAGE OF STIPULATED FACTS, WE WILL
10 JUST HAVE A COPY OF THEM IN THEIR BINDER.

11 **MR. BURSOR:** YOUR HONOR, THE VERSION THAT THE JURORS
12 GET WILL NOT HAVE THE STRIKE-THROUGHS ON IT?

13 **THE COURT:** CORRECT. IT WILL BE A CLEAN VERSION BUT
14 I THOUGHT IT WOULD BE EASIER FOR YOU IF I DID A TRACK CHANGE
15 SO YOU THAT YOU WOULD KNOW EXPLICITLY WHAT I'M NOT READING.

16 **MR. BURSOR:** THE NUMBERING -- THE REASON I AM ASKING
17 IS BECAUSE I MAY WANT TO REFERENCE OF A NUMBER --

18 **THE COURT:** WE WILL GIVE YOU A CLEAN COPY SO YOU CAN
19 HAVE IT.

20 **MR. BURSOR:** OKAY.

21 **THE COURT:** ANYTHING ELSE? OKAY.

22 **THE CLERK:** THEY FILED THEIR STIPULATIONS.

23 **THE COURT:** TERRIFIC. THANK YOU VERY MUCH. ALL
24 RIGHT. WE WILL STAND IN RECESS.

25 (PROCEEDINGS RECESSED AT 8:13 A.M.; RESUMED AT 8:14 A.M.)

1 **THE COURT:** LET'S GO ON THE RECORD.

2 WE ARE BACK ON THE RECORD. I RECEIVED A PROPOSED REVISED
3 STATEMENT OF THE CASE. I'M NOT SURE WHERE THIS IS COMING FROM
4 AND WHAT IT SPECIFICALLY RELATES TO.

5 **MR. ELLIS:** SO WHEN I WAS GOING BACK THROUGH THIS
6 WEEKEND AND LOOKING AT THE MATERIALS, I KNEW THAT YOU HAD SAID
7 THAT YOU WERE PREPARING ONE OR HAD PREPARED ONE. I JUST
8 WANTED TO PUT SOMETHING IN TO SHOW YOU THAT THAT'S KIND OF
9 ALONG THE LINES THAT I WAS THINKING ABOUT. THAT IT'S VERY,
10 VERY SHORT AND VERY PLAIN AND VERY NONARGUMENTATIVE. THAT'S
11 ALL, YOUR HONOR.

12 **THE COURT:** OKAY. WELL, I'LL TAKE A LOOK AT IT.
13 I'VE ALREADY PREPARED MY COMMENTS AND IT WAS -- AND IT'S
14 EQUALLY, IF NOT EVEN SHORTER, THAN WHAT YOU'VE PROVIDED.

15 JUST A REMINDER. IN TERMS OF WHAT IT IS I'M TELLING THE
16 JURY, I HAVE A LOT TO TELL THE JURY WHEN THEY COME IN FOR
17 SELECTION.

18 **MR. ELLIS:** YEAH.

19 **THE COURT:** THEY -- ONE OF THE THINGS THAT I TELL
20 THEM TOMORROW TYPICALLY IS THAT THEY REMEMBER ANYTHING THAT I
21 SAID ON MONDAY AS A MEANS OF REMINDING THEM THEY HAVE TO TAKE
22 NOTES. USUALLY THEY DON'T REMEMBER ANYTHING. THE ONLY
23 THING -- ALL I WANT THEM TO KNOW IS THIS IS A TCPA CASE AND
24 THAT THE DEFENDANTS DENY EVERYTHING. OTHERWISE, YOU KNOW, IT
25 IS NOT A CRIMINAL CASE, IT IS NOT AN ANTITRUST CASE. THEY

1 JUST HAVE TO HAVE THE BASIC UNDERSTANDING OF WHAT WE ARE DOING
2 TODAY. THAT'S REALLY THE WHOLE POINT OF IT. ALL RIGHT?

3 OKAY. THANK YOU.

4 **MR. ELLIS:** THANK YOU.

5 (RECESS TAKEN AT 8:16 A.M.; RESUMED AT 9:15 A.M.)

6 (PROCEEDINGS HELD IN THE PRESENCE OF PROSPECTIVE JURORS.)

7 **THE CLERK:** MY NAME IS FRANCES. I'M THE JUDGE'S
8 CLERK AND I'M GOING TO REQUEST CALL THE ROLL. SO IF YOU WILL
9 RESPOND OUT LOUD, RAISE YOUR HAND AND WE'LL START.

10 CARLOS ARAGON?

11 **PROSPECTIVE JUROR:** HERE.

12 **THE CLERK:** CLAUS BLEM?

13 **PROSPECTIVE JUROR:** HERE.

14 **THE CLERK:** DAVID BRADY?

15 **PROSPECTIVE JUROR:** HERE.

16 **THE CLERK:** ROBERT CAMP?

17 **PROSPECTIVE JUROR:** HERE.

18 **THE CLERK:** ROBERT CARRIGAN.

19 **PROSPECTIVE JUROR:** HERE.

20 **THE CLERK:** SARABJIT CHAHAL?

21 **PROSPECTIVE JUROR:** HERE.

22 **THE CLERK:** ALL RIGHT.

23 MARIANNE COOPER?

24 **PROSPECTIVE JUROR:** HERE.

25 **THE CLERK:** SAMANEH GHASEMIGO HAR?

1 **PROSPECTIVE JUROR:** HERE.

2 **THE CLERK:** LOV KUMAR GOEL?

3 **PROSPECTIVE JUROR:** HERE.

4 **THE CLERK:** KELLY GUIDI?

5 **PROSPECTIVE JUROR:** HERE.

6 **THE CLERK:** CHRISTIAN HINDERLIE?

7 **PROSPECTIVE JUROR:** HERE.

8 **THE CLERK:** MATTHEW HUIZINGH? I'M SORRY, I LOOKED
9 DOWN AT THE NAME. THANK YOU.

10 SORRY.

11 CATHY JEW?

12 **PROSPECTIVE JUROR:** HERE.

13 **THE CLERK:** NANCY MOWBRAY.

14 **PROSPECTIVE JUROR:** HERE.

15 **THE CLERK:** DANIEL NICHOLAS?

16 **PROSPECTIVE JUROR:** HERE.

17 **THE CLERK:** GERTRUDIS OCHOA?

18 **PROSPECTIVE JUROR:** HERE.

19 **THE CLERK:** MARISA ONG?

20 **PROSPECTIVE JUROR:** HERE.

21 **THE CLERK:** GARY OTTO?

22 **PROSPECTIVE JUROR:** HERE.

23 **THE CLERK:** FREESIA RAFELLO?

24 **PROSPECTIVE JUROR:** HERE.

25 **THE CLERK:** BEN RAMOS?

1 **PROSPECTIVE JUROR:** HERE.

2 **THE CLERK:** JOSEPH ROUSSEU?

3 **PROSPECTIVE JUROR:** HERE.

4 **THE CLERK:** BELARMINO RUSTIA?

5 **PROSPECTIVE JUROR:** HERE.

6 **THE CLERK:** THOMAS SYLVIA? YES?

7 **PROSPECTIVE JUROR:** I AM DAVID THOMAS SYLVIA?

8 **THE CLERK:** IS IT SYLVA?

9 **PROSPECTIVE JUROR:** LAST NAME IS SYLVIA.

10 **THE CLERK:** SYLVIA. THANK YOU. I DIDN'T HEAR IT.
11 SORRY.

12 AARON SKILKEN?

13 **PROSPECTIVE JUROR:** HERE.

14 **THE CLERK:** NOAM SMOOHA?

15 **PROSPECTIVE JUROR:** HERE.

16 **THE CLERK:** ELISARAH SUDHARMADJI?

17 **PROSPECTIVE JUROR:** HERE.

18 **THE CLERK:** ALL RIGHT. CHRISTOPHER TENNYSON?

19 **PROSPECTIVE JUROR:** HERE.

20 **THE CLERK:** GINA VELEZ?

21 **PROSPECTIVE JUROR:** HERE.

22 **THE CLERK:** JULIA WATLEY?

23 **PROSPECTIVE JUROR:** HERE.

24 **THE CLERK:** CHRISTOPHER WHITE?

25 **PROSPECTIVE JUROR:** HERE.

1 **THE CLERK:** GINA WILKINS?

2 **PROSPECTIVE JUROR:** HERE.

3 **THE CLERK:** WILLIAM WILSON?

4 **PROSPECTIVE JUROR:** HERE.

5 **THE CLERK:** THERESA WOO?

6 **PROSPECTIVE JUROR:** HERE.

7 **THE CLERK:** AND YUN XU?

8 **PROSPECTIVE JUROR:** HERE.

9 **THE COURT:** OKAY. I'M GOING TO CALL UP YOUR NAME. I
10 WILL CALL UP 18 PEOPLE TO SIT IN THE BOX. THE FIRST PERSON, I
11 WILL COME AND SHOW YOU WHERE YOU ARE GOING TO SIT. THE FIRST
12 PERSON COMES AND SITS HERE AND WE MOVE DOWN THE ROW. I'LL
13 DIRECT YOU. SO THE FIRST PERSON COMES AND SITS IN THIS CHAIR
14 (INDICATING).

15 CLAUS BLEM, B-L-E-M.

16 ROBERT CAMP.

17 MARIANNE COOPER.

18 SAMANEH GHASEMIGO HAR. LAST NAME IS

19 G-H-A-S-E-M-I-G-O-H-A-R. THAT'S FOR COUNSEL AND MY BENEFIT.

20 **PROSPECTIVE JUROR:** THAT'S ME.

21 **THE CLERK:** ALL RIGHT.

22 KUMAR GOEL, G-O-E-L.

23 KELLY GUIDI, G-U-I-D-I.

24 **PROSPECTIVE JUROR:** IT IS PRONOUNCED GUIDI.

25 **THE CLERK:** CHRISTIAN HINDERLIE, H-I-N-D-E-R-L-I-E.

1 MATTHEW HUIZINGH, H-U-I-Z-I-N-G-H.

2 **PROSPECTIVE JUROR:** HUIZINGH.

3 **THE CLERK:** CATHY JEW, J-E-W.

4 OKAY. THE NEXT NAME THAT I CALL IS GOING TO COME WAY IN
5 THE BACK ROW, WAY OVER ON THE RIGHT WAY ON THE END. NOT
6 MS. JEW BUT THE NEXT PERSON.

7 DANIEL NICHOLAS, N-I-C-H-O-L-A-S. SO YOU GO WAY DOWN ON
8 THE END IN THE BACK THERE.

9 MARISA ONG, O-N-G.

10 FREESIA RAFELLO, R-A-F-E-L-L-O.

11 JOSEPH ROUSSEU, R-O-U-S-S-E-U.

12 GINA VELEZ, V-E-L-E-Z.

13 CHRISTOPHER WHITE, W-H-I-T-E.

14 WILLIAM WILSON, W-I-L-S-O-N.

15 THERESA WOO, W-O-O.

16 AND YUN XU, X-U.

17 SORRY, CAN YOU GET AROUND THE SCREEN THERE?

18 GREAT. I'LL GO AND GET THE JUDGE.

19 (PAUSE IN THE PROCEEDINGS.)

20 **THE COURT:** GOOD MORNING, EVERYONE.

21 EVERYONE: GOOD MORNING.

22 **THE CLERK:** YOU MAY BE SEATED.

23 **THE COURT:** GOOD MORNING. YOU HAVE ALL BEEN CALLED
24 AS PROSPECTIVE JURORS IN THE CASE OF IGNACIO PEREZ VERSUS RASH
25 CURTIS & ASSOCIATES, CASE NUMBER 16-3396.

1 IF YOU ALL PLEASE RISE AGAIN AND YOU WILL BE SWORN IN.

2 (PROSPECTIVE JURORS SWORN.)

3 **THE COURT:** WELL, I CAN TELL BY YOUR LUKEWARM
4 RESPONSE TO MY EXCITED GOOD MORNING THAT NO ONE IS HAPPY TO BE
5 HERE. MAYBE A COUPLE OF YOU. I UNDERSTAND.

6 LET ME START OFF BY THANKING YOU FOR HONORING YOUR
7 CITIZENSHIP TODAY. THE RIGHT TO A TRIAL BY JURY IS GUARANTEED
8 TO EACH AND EVERY ONE OF US BY THE CONSTITUTION. IT'S
9 GUARANTEED. BUT THAT RIGHT CANNOT BE EFFECTUATED IN
10 COURTROOMS ACROSS THE UNITED STATES UNLESS INDIVIDUALS LIKE
11 EACH AND EVERY ONE OF YOU DO YOUR CIVIC DUTY AND APPEAR. SO,
12 AGAIN, I THANK YOU.

13 BEFORE I CONTINUE, CAN EVERYONE HEAR ME? IF NOT, WE HAVE
14 ASSISTED LISTENING DEVICES. RAISE YOUR HAND AND WE CAN BRING
15 YOU ONE.

16 ALL RIGHT. THANK YOU.

17 SO I WOULD LIKE TO THINK THAT WE CAN ALL AGREE AT A
18 MINIMUM THAT A RIGHT TO A TRIAL BY JURY IS ONE OF OUR MOST
19 CHERISHED RIGHTS. IT IS GUARANTEED TO US IN THE SIXTH AND
20 SEVENTH AMENDMENTS. I HAVE HAD THIS OLD COPY OF THE
21 CONSTITUTION WITH ME SINCE LAW SCHOOL.

22 BUT, FRANKLY, IF YOU PICK UP THE NEWSPAPER ON ANY GIVEN
23 DAY AND YOU LOOK AT THE WORLD SECTION, YOU WILL PROBABLY FIND
24 THAT THAT RIGHT IS NOT GUARANTEED TO PEOPLE ACROSS THE GLOBE.
25 SO, IN THOSE PLACES DEMOCRACY DOESN'T GOVERN. ONCE A YEAR

1 MAYBE YOU GET ASKED TO COME AND ENGAGE IN YOUR DEMOCRACY. I
2 UNDERSTAND DEMOCRACY IS NOT CONVENIENT. IT REALLY ISN'T.

3 BUT WE REAP THE BENEFITS OF A DEMOCRATIC SOCIETY AND ONCE
4 IN A WHILE THAT MEANS THAT WE HAVE TO TAKE SOME TIME OUT OF
5 OUR DAY TO PARTICIPATE IN OUR DEMOCRACY. THE RIGHT TO SERVE
6 AS A TRIAL JUROR IS GUARANTEED TO EACH AND EVERY ONE OF YOU.
7 AND THAT RIGHT CANNOT BE DENIED TO YOU ON THE BASIS OF YOUR
8 GENDER, SEX, SEXUAL ORIENTATION, RELIGION, ECONOMIC STATUS,
9 AND, FRANKLY, IT WAS NOT THAT LONG AGO IN OUR COUNTRY'S
10 HISTORY WHEN I COULD NOT SAY THAT. IN FACT, IT WAS NOT THAT
11 LONG AGO IN OUR COUNTRY'S HISTORY WHEN MANY OF US IN THIS
12 COURTROOM DID NOT HAVE THE RIGHT TO SERVE AS JURORS. MYSELF
13 INCLUDED.

14 FOR THOSE WOMEN IN THE ROOM, WE ARE CELEBRATING THE
15 ANNIVERSARY OF THE RIGHT GIVEN TO WOMEN TO VOTE, THE 20TH
16 AMENDMENT. SO JUST REMEMBER, THERE WAS A TIME IN OUR
17 COUNTRY'S HISTORY WHEN THE RULE OF LAW WAS BEING DECIDED BY A
18 SELECT GROUP OF PEOPLE, MANY OF YOU WERE NOT INVITED, MUCH
19 LESS GIVEN THE RIGHT TO PARTICIPATE.

20 SO LET ME SHARE WITH YOU JUST A LITTLE BIT ABOUT THIS
21 CASE. THIS IS A CIVIL CASE AND I'LL TELL YOU ABOUT IT AND
22 INTRODUCE THE PARTIES IN A MOMENT. BUT IT IS THE DUTY OF
23 JURORS TO DETERMINE THE FACTS OF THE CASE. THAT IS WHAT WE --
24 THAT IS WHAT THIS PROCESS IS ABOUT. EVIDENCE IS PRESENTED.
25 THE PARTIES CAN'T AGREE ON WHAT THE FACTS ARE, AND WE ASK

1 JURORS TO DECIDE IN THEIR COLLECTIVE WISDOM WHAT THE FACTS
2 ARE. JURORS ARE THE JUDGES OF THE WEIGHT AND THE EVIDENCE AND
3 THE CREDIBILITY OF THE WITNESSES. BUT THERE'S AN IMPORTANT
4 LIMITATION AND RESTRICTION AND THAT IS THAT JURORS HAVE TO
5 DECIDE THE CASE BASED UPON THE RULE OF LAW. AND THAT'S WHERE
6 A JUDGE COMES IN. IT IS MY JOB, NOT TO BE AN ADVOCATE, BUT TO
7 SAY WHAT THE RULES OF THE LAW ARE AND WHAT THE LAW PROVIDES
8 AND TO INSTRUCT THE JURY ON THE LAW.

9 AND IT IS THE JURORS' OBLIGATION TO ACCEPT THOSE
10 INSTRUCTIONS WITHOUT RESERVATION. AND THAT IS BECAUSE I DON'T
11 MAKE THE LAW, I JUST TELL YOU WHAT THE LAW IS. THAT -- THOSE
12 LAWS ARE DETERMINED BY OUR ELECTED REPRESENTATIVES AND BY THE
13 COURTS OF APPEAL WHO DECIDE WHAT THE LAW IS WHEN THERE IS
14 AMBIGUITY. SO WE WANT THE JURORS TO DECIDE THE CASE BASED
15 UPON THE LAW, NOT BASED UPON THEIR OWN PERSONAL OPINIONS, BUT
16 ON THE LAW.

17 NOW, THE ROLE OF THE LAWYERS IS SEPARATE. THEY HAVE A
18 DISTINCT DUTY TO ADVOCATE FOR THEIR CLIENTS AND IT IS THEIR
19 JOB TO DO THAT PIECE. SO WHEN WE ARE ALL IN THE COURTROOM
20 EACH DOING OUR OWN JOB, WE BELIEVE THAT WE ARE GOING TO GET TO
21 THE RIGHT RESULT. AND I AM A TRUE BELIEVER IN JURIES. I
22 THINK THE JURIES GET TO THE RIGHT RESULT.

23 OKAY. THAT RESULT IS SHOWN IN WHAT WE CALL A VERDICT, AND
24 YOU MAY HAVE HEARD OF THAT. IT IS IMPORTANT THAT JURORS
25 ALWAYS KEEP AN OPEN MIND. I'VE TRIED ENOUGH CASES TO KNOW

1 WHEN YOU HEAR ONE SIDE'S VERSION, YOU THINK, OH, THAT IS
2 GREAT, THEY MUST BE RIGHT. UNTIL YOU HEAR THE OTHER SIDE'S
3 VERSION, YOU ARE REALLY NOT QUITE SURE. SO, IT IS IMPORTANT
4 TO KEEP AN OPEN MIND UNTIL ALL OF THE PIECES OF THE PUZZLE
5 HAVE BEEN PRESENTED TO YOU AND, WHOEVER IS CHOSEN, I'LL HAVE
6 SOME MORE INSTRUCTIONS FOR YOU ON THAT.

7 BUT LET'S SHIFT GEARS AND, AGAIN, I'M GOING TO PAUSE.
8 DOES ANYBODY HAVE ANY LANGUAGE ISSUES WHERE THEY CANNOT
9 UNDERSTAND WHAT I'M SAYING, RAISE YOUR HAND? OKAY. NONE ARE
10 RAISED.

11 SO LET'S TALK A LITTLE BIT MORE ABOUT THIS CASE. FIRST
12 SOME INTRODUCTIONS. I WILL HAVE THE PARTIES INTRODUCE
13 THEMSELVES. MR. BURSOR, IF WILL YOU INTRODUCE YOURSELF FOR
14 THE PLAINTIFFS AND YOUR TEAM, PLEASE.

15 **MR. BURSOR:** GOOD MORNING, EVERYONE. MY NAME IS
16 SCOTT BURSOR. I AM FROM THE LAW FIRM OF BURSOR & FISHER AND
17 SEVERAL OF THE LAWYERS FROM MY FIRM THAT WILL BE WORKING WITH
18 ME DURING THE TRIAL ARE ALSO HERE. MY PARTNER TIM FISHER,
19 BLAIR REED FROM OUR FIRM AND YEREMEY KRIVOSHEY FROM OUR FIRM
20 CAME IN A COUPLE OF MINUTES LATE AND WITH HIM IS OUR CLIENT,
21 IGNACIO PEREZ, WHO'S SITTING IN THE BACK WITH MR. KRIVOSHEY.
22 HE WILL PROBABLY COME UP HERE LATER BUT THEY DIDN'T WANT TO
23 DISTURB YOUR HONOR'S PRESENTATION.

24 **THE COURT:** THANK YOU. MR. ELLIS.

25 **MR. ELLIS:** THANK YOU, YOUR HONOR. GOOD MORNING,

1 LADIES AND GENTLEMEN. MY NAME IS MARK ELLIS, AND I'M FROM A
2 LAW FIRM, ELLIS LAW GROUP, LLP. AND I'LL BE THE LEAD TRIAL
3 ATTORNEY FOR THE DEFENSE. AND WITH ME IS ANTHONY VALENTI, ONE
4 OF MY ASSOCIATES. HE'S A SENIOR ASSOCIATE. LARRY IGLESIAS,
5 ANOTHER ASSOCIATE. HE'S A JUNIOR ASSOCIATE SITTING IN HIS
6 FIRST TRIAL. AND WITH ME RIGHT HERE IS ROBERT KEITH AND HE IS
7 THE REPRESENTATIVE OF RASH CURTIS, WHO IS THE DEFENDANT IN
8 THIS CASE, AND HE'S THE VICE PRESIDENT OF OPERATIONS THERE.
9 GOOD MORNING.

10 **THE COURT:** THANK YOU. OKAY. SO I'D LIKE YOU ALL TO
11 LOOK AROUND THE ROOM. ALL THE JURORS SEEM TO HAVE COME ON
12 THIS SIDE. I'M LOOKING FOR EIGHT JURORS. THAT'S ALL I'M
13 LOOKING FOR, EIGHT JURORS. SO MOST OF YOU WILL NOT BE WITH
14 US.

15 TIMING. THIS IS ACTUALLY A VERY SHORT CASE AS FAR AS
16 FEDERAL CASES GO. A COUPLE OF YEARS AGO AT THIS POINT IN
17 TIME, I WAS PICKING A JURY FOR A FOUR-MONTH CRIMINAL TRIAL.
18 THAT IS NOT THIS CASE. AND YOU JUST RANDOMLY HAPPENED TO GET
19 SELECTED TO BE ON A SHORT CASE. I EXPECT THIS CASE TO BE
20 FINISHED BY NEXT WEEK, SO IT IS AS SHORT AS THEY COME FOR
21 FEDERAL CASES.

22 OUR TRIAL DAY IS AS FOLLOWS: I OPERATE FROM 8:30 TO
23 1:30 WITH MY TRIAL DAYS. I ACTUALLY START WITH THE LAWYERS
24 EARLIER BUT EVIDENCE IS PRESENTED BETWEEN 8:30 AND 1:30. WE
25 DO NOT TAKE LUNCH. WE TAKE TWO 15-MINUTE BREAKS AT

1 10:00 O'CLOCK AND 11:45 IN CASE YOU HAVE CONFERENCE CALLS TO
2 SCHEDULE AND THEN TAKE LUNCH AFTERWARDS.

3 I DO THIS FOR A NUMBER OF REASONS. ONE, FOR THOSE OF YOU
4 WHO ARE TRAVELING WHO ARE NOT LOCAL TO OAKLAND, YOU GET BACK
5 ON THE ROAD BEFORE THERE IS ANY TRAFFIC AND IT MAKES IT MUCH
6 FASTER.

7 TWO, IN FEDERAL COURT OUR CASES DON'T GO AWAY WHEN WE ARE
8 IN TRIAL. I HAVE 300 OTHER CASES. SO WHEN YOU LEAVE, I DEAL
9 WITH MY OTHER CASES. THEY DON'T GO AWAY. PEOPLE ARE SITTING
10 IN THE COURTROOM. I HAVE HEARINGS AFTER YOU GO. SO I CAN
11 FEEL YOUR PAIN. WHEN I AM IN TRIAL, I STILL HAVE WORK TO DO
12 TOO, SO I UNDERSTAND.

13 BUT, I CAN PROMISE YOU, I'M ONE OF THE MORE EFFICIENT
14 TRIAL JUDGES AROUND. WE DO NOT WASTE TIME. I MAKE THE
15 PARTIES WORK LATE AND COME IN EARLY SO WHEN YOU ARE HERE, ALL
16 YOU ARE DOING IS HEARING EVIDENCE.

17 NOW, ONCE THE CASE IS SUBMITTED TO YOU FOR DELIBERATION, I
18 TRY TO GET IT OVER WITH, SO I HAVE YOU DELIBERATE ALL DAY. SO
19 YOU CAN BE DELIBERATING AND I CAN BE WORKING IN HERE, SO THAT
20 WORKS FOR ME. BUT THAT WAY IT ALSO GETS YOU DONE SOONER. SO,
21 THIS IS LIKE I SAID A PRETTY SHORT TRIAL.

22 NOW, WITH RESPECT TO HARDSHIPS, AND I HAVE SEEN SOME
23 PEOPLE HAVE INDICATED THAT THEY HAVE GOT SOME HARDSHIPS AND WE
24 WILL TALK ABOUT THAT. ECONOMIC HARDSHIP IS NOT A REASON IN
25 AND OF ITSELF TO BE EXCUSED. NOR ARE GENERAL TRAVEL PLANS, IF

1 YOU LIKE TO TRAVEL, BUT THERE ARE SOME SITUATIONS WHERE I
2 WOULD GRANT A HARDSHIP. THEY ARE NARROWLY GRANTED, NARROWLY
3 GRANTED.

4 SO WHAT I WOULD LIKE YOU TO DO IS LOOK TO YOUR NEIGHBOR.
5 WHEN YOU ARE ASKING FOR A HARDSHIP, THE QUESTION I'M GOING TO
6 HAVE FOR YOU IS WHAT MAKES YOU SO SPECIAL THAT YOUR NEIGHBOR
7 SHOULD SIT BUT NOT YOU. THAT'S THE QUESTION. NOW, IF YOU ARE
8 TAKING CARE OF AN ELDERLY PARENT WHO HAS NO -- CANNOT MOVE,
9 CANNOT FEED THEMSELVES, YEAH, I WOULD SAY THAT IS A HARDSHIP.

10 SOMETIMES I LET OUT ELEMENTARY SCHOOL TEACHERS BECAUSE I
11 THINK THAT CHILDREN IN SCHOOLS SHOULD NOT BE SITTING THERE
12 WATCHING VIDEOS BECAUSE OUR SCHOOL DISTRICTS CAN'T AFFORD TO
13 PAY SUBSTITUTES TO COME IN AND TEACH THEM. BUT IT'S GOT TO BE
14 SOMETHING SPECIAL.

15 NOW, THAT DOESN'T MEAN YOU WILL GET SELECTED. LOOK
16 AROUND. ONLY LOOKING FOR EIGHT. IF YOU ARE ASKING FOR A
17 HARDSHIP, THAT'S DIFFERENT. THAT'S ME SAYING THAT YOU'RE
18 SPECIAL AND YOU SHOULDN'T SERVE BUT YOUR NEIGHBOR SHOULD.

19 SO LET ME TELL YOU A LITTLE MORE ABOUT THIS SPECIFIC CASE.
20 THIS IS WHAT WE CALL A CLASS ACTION LAWSUIT. PLAINTIFF,
21 MR. PEREZ, AND THE CLASS MEMBERS ALLEGE THAT THE DEFENDANT,
22 RASH CURTIS & ASSOCIATES, WHICH IS A DEBT COLLECTOR, CALLED
23 PEOPLE ON THEIR CELLULAR TELEPHONES AND THAT RASH CURTIS
24 OBTAINED THEIR NUMBER THROUGH A PROCESS CALLED SKIP-TRACING.
25 THE PLAINTIFF AND THE CLASS MEMBERS ALLEGE THAT ALL OF THOSE

1 CALLS VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT. THIS IS
2 IN TITLE 47 OF THE UNITED STATES CODE AT SECTION 227. AND
3 PLAINTIFF AND THE CLASS MEMBERS HAVE THE BURDEN TO PROVE THEIR
4 CLAIMS. RASH CURTIS DENIES ALL OF THE CLAIMS AND DENIES THAT
5 THERE WAS A SKIP-TRACING THAT CAN BE PROVED.

6 NOW, I HAD THE LAWYERS AND THEIR PARTIES INTRODUCE
7 THEMSELVES. LET ME INTRODUCE MY STAFF. HERE IS MY COURTROOM
8 DEPUTY, FRANCES STONE. SHE IS THE PERSON WITH WHOM YOU WOULD
9 HAVE THE MOST INTERACTION. AND MY COURT REPORTER, DIANE
10 SKILLMAN. NOW, DIANE IS THE PERSON I SAY WHO IS IN THE
11 COURTROOM WHO WORKS 100 PERCENT OF THE TIME. WHEN THE LAWYERS
12 ARE ASKING QUESTIONS, I COULD BE DOZING OFF. I DON'T BUT I
13 COULD BE. BUT DIANE, SHE HAS TO TYPE DOWN EVERY SINGLE THING
14 THAT IS SAID. AND SHE'S VERY PATIENT WITH ME BECAUSE I DON'T
15 LIKE TO TAKE BREAKS. BUT, ONCE IN A WHILE I DO HAVE TO TAKE A
16 BREAK BECAUSE, IF I DON'T, SHE DOESN'T GET A BREAK AND SHE HAS
17 TO TYPE EVERYTHING THAT EVERYONE SAYS.

18 ALL RIGHT. NOW, I'VE GIVEN YOU SOME BACKGROUND AND WE ARE
19 GOING TO START THE PROCESS OF VOIR DIRE. I SAW IN THE
20 QUESTIONNAIRES THERE IS A TEXAN OR SOMEONE WHO WAS IN TEXAS,
21 WHO WENT TO SCHOOL IN TEXAS. IF YOU ARE IN TEXAS, WHERE I
22 WENT TO LAW SCHOOL, THEY CALL IT VOIR DIRE. VOIR DIRE, SAME
23 AS VOIR DIRE, BUT VOIR DIRE IS ACTUALLY FRENCH, IT'S NOT
24 TEXAN. IT COMES FROM THE 1600S AND THAT WORD IS AN
25 ANGLO-FRENCH WORD, WHICH LITERALLY MEANS TO SPEAK THE TRUTH.

1 SO THIS PROCESS OF VOIR DIRE IS A PROCESS BY WHICH WE ASK
2 YOU TO SPEAK THE TRUTH IN RESPONSE TO OUR QUESTIONS. IF AT
3 ANY TIME -- AND I DON'T -- BECAUSE THIS ISN'T A SENSITIVE
4 CASE, IT'S NOT A CRIMINAL CASE. FREQUENTLY, I HAVE TO TALK TO
5 PEOPLE ABOUT SOMETHING THAT IS PARTICULARLY SENSITIVE. I'M
6 HAPPY TO PROVIDE YOU WITH A MEASURE OF PRIVACY. IF THERE IS
7 SOMETHING YOU NEED TO TELL ME THAT YOU DON'T WANT ANYONE ELSE
8 TO HEAR, THAT'S FINE. I CAN GIVE YOU THAT PRIVACY BUT JUST
9 LET ME KNOW. AND DON'T NOT ANSWER THE QUESTION, JUST TELL ME
10 YOU WOULD LIKE SOME PRIVACY AND I CAN PROVIDE THAT.

11 OKAY. NOW, WE'RE GOING TO GO AND REVIEW YOUR
12 QUESTIONNAIRES. AND I THINK AS YOU MAY BE ABLE TO TELL AT
13 THIS POINT, THE QUESTIONNAIRES WERE GEARED TOWARD THAT. SO,
14 IF WE HAVE THE MIC, WE WILL START OFF.

15 **THE CLERK:** AND THEN YOU NEED TO HOLD THE MIC MUCH IN
16 FRONT LIKE THIS. IF YOU HOLD IT DOWN HERE, WE CAN'T HEAR IT.
17 THERE YOU ARE.

18 **THE COURT:** MR. BLEM?

19 **PROSPECTIVE JUROR:** YES.

20 **THE COURT:** DID I SAY THAT RIGHT?

21 **PROSPECTIVE JUROR:** YES.

22 **THE COURT:** GOOD MORNING.

23 **PROSPECTIVE JUROR:** GOOD MORNING.

24 **THE COURT:** SO IN TERMS OF YOUR -- YOU'RE CURRENTLY
25 EMPLOYED AT KAISER, RIGHT?

1 **PROSPECTIVE JUROR:** CORRECT.

2 **THE COURT:** SO WE DON'T HAVE AN ISSUE WITH RESPECT
3 TO -- KAISER IS ONE OF THESE INSTITUTIONS THAT ACTUALLY
4 COMPENSATES YOU --

5 **PROSPECTIVE JUROR:** YES. I'M GETTING PAID VERY WELL
6 RIGHT NOW, SO....

7 **THE COURT:** OKAY.

8 CAN YOU TELL ME -- YOU CHECKED THE BOX ABOUT HAVING FAMILY
9 MEMBERS OR SELF-EXPERIENCE WITH DEBT COLLECTORS. CAN YOU JUST
10 GIVE ME A LITTLE MORE INFORMATION ON THAT TOPIC. YOU SAID
11 THERE WAS A BANKRUPTCY --

12 **PROSPECTIVE JUROR:** MY DAUGHTER GOT INTO TROUBLE WITH
13 A DEBT COLLECTION AND WAS SENT TO DEBT COLLECTORS. AND I
14 THINK SHE ULTIMATELY PAID THEM.

15 AT ONE POINT, I THINK ABOUT 30 YEARS AGO, I HAD TO DECLARE
16 BANKRUPTCY. SO, I'M FAMILIAR WITH DEBT COLLECTORS AS WELL.

17 **THE COURT:** CAN YOU TELL ME ANYTHING ABOUT YOUR
18 EXPERIENCE? WHAT I AM INTERESTED IN HERE -- WHAT WE ARE
19 LOOKING FOR ARE JURORS WHO CAN BE FAIR. RIGHT?

20 SO, DID YOU HAVE A PARTICULARLY BAD OR GOOD OR JUST
21 NEUTRAL EXPERIENCE WITH THE DEBT COLLECTORS?

22 **PROSPECTIVE JUROR:** I MEAN, THEY ARE JUST DOING THEIR
23 JOB. SO, I OWED MONEY, THEY WERE ASKING FOR THE MONEY. SO --

24 **THE COURT:** OKAY.

25 **PROSPECTIVE JUROR:** IT'S UNDERSTANDABLE.

1 **THE COURT:** AND THERE'S NOTHING -- DO YOU HARBOR ANY
2 ILL FEELINGS TOWARD DEBT COLLECTORS THAT PERHAPS THE
3 DEFENDANTS SHOULD KNOW ABOUT?

4 **PROSPECTIVE JUROR:** NO.

5 **THE COURT:** OKAY.

6 **PROSPECTIVE JUROR:** WISH I DIDN'T HAVE TO PAY THE
7 MONEY BACK THEN, BUT....

8 **THE COURT:** NOW, YOU SAID YOU STRONGLY AGREE THERE
9 ARE TOO MANY LAWSUITS. TELL ME YOUR THOUGHTS ON THAT FRONT.

10 **PROSPECTIVE JUROR:** WHAT'S THAT QUOTE THAT THE UNITED
11 STATES HAS 90 PERCENT OF THE WORLD'S ATTORNEYS?

12 **THE COURT:** THEY DON'T ALL LITIGATE.

13 **PROSPECTIVE JUROR:** NO, THEY DON'T ALL LITIGATE. BUT
14 IT IS AN OVERWHELMING PROPORTION.

15 **THE COURT:** AND, IN TERMS OF YOUR OPINIONS WITH
16 RESPECT TO OUR LEGAL SYSTEM, MOST OF THAT WAS -- YOUR COMMENT
17 WAS RELATED TO CRIMINAL?

18 **PROSPECTIVE JUROR:** CORRECT.

19 **THE COURT:** DO YOU HAVE ANYTHING TO SAY WITH RESPECT
20 TO THE CIVIL SIDE?

21 **PROSPECTIVE JUROR:** NO.

22 **THE COURT:** OKAY. ALL RIGHT.

23 OKAY. THANK YOU.

24 **PROSPECTIVE JUROR:** THANK YOU. DO I PASS IT?

25 **THE COURT:** YES, PLEASE.

1 MR. CAMP?

2 PROSPECTIVE JUROR: YES.

3 THE COURT: GOOD MORNING, SIR.

4 PROSPECTIVE JUROR: HI.

5 THE COURT: SO, MR. CAMP, CAN YOU -- DID YOU GET A
6 DEGREE AT BERKELEY IN ELECTRONICS --

7 PROSPECTIVE JUROR: NO.

8 THE COURT: -- OR DID YOU JUST TAKE COURSES?

9 PROSPECTIVE JUROR: UNDERGRADUATE. I NEVER GOT THE
10 DEGREE. JUST STUDIED VARIOUS COURSES.

11 THE COURT: I COULDN'T QUITE TELL. THE NAME OF THE
12 COMPANY -- YOU ARE AN INVENTORY MANAGER, IS THAT IT?

13 PROSPECTIVE JUROR: YES.

14 THE COURT: WHAT IS THE NAME OF THE COMPANY, SIR?

15 PROSPECTIVE JUROR: ANDERSON HONDA.

16 THE COURT: ANDERSON HONDA.

17 PROSPECTIVE JUROR: YES.

18 THE COURT: AND YOU HAVE BEEN ON A JURY THREE TIMES.
19 WERE THEY ALL CRIMINAL CASES IN STATE COURT?

20 PROSPECTIVE JUROR: ONE WAS DOMESTIC VIOLENCE, ONE
21 WAS DUI AND ONE WAS ROBBERY.

22 THE COURT: OKAY. NOW, IN EACH OF THOSE CASES --
23 LET'S START WITH THE DV. DID THE JURY REACH A VERDICT?

24 PROSPECTIVE JUROR: WHICH ONE WAS THAT?

25 THE COURT: DOMESTIC VIOLENCE.

1 **PROSPECTIVE JUROR:** WE WERE SPLIT ON THAT ONE.

2 **THE COURT:** SO YOU HUNG? THE JURY HUNG?

3 **PROSPECTIVE JUROR:** (NODS HEAD.)

4 **THE COURT:** WERE YOU THE FOREPERSON?

5 **PROSPECTIVE JUROR:** ON THAT ONE, NO.

6 **THE COURT:** HOW ABOUT THE DUI? WAS THERE A VERDICT
7 IN THE DUI?

8 **PROSPECTIVE JUROR:** YES, THERE WAS.

9 **THE COURT:** WHAT WAS THAT VERDICT?

10 **PROSPECTIVE JUROR:** GUILTY.

11 **THE COURT:** GUILTY. WERE YOU THE FOREPERSON THERE?

12 **PROSPECTIVE JUROR:** I WAS.

13 **THE COURT:** AND THEN WITH RESPECT TO THE ROBBERY
14 CASE, WAS THERE A VERDICT?

15 **PROSPECTIVE JUROR:** GUILTY VERDICT.

16 **THE COURT:** GUILTY? WERE YOU THE FOREPERSON AGAIN?

17 **PROSPECTIVE JUROR:** NO.

18 **THE COURT:** OKAY. AND WAS THAT IN SAN FRANCISCO
19 SUPERIOR COURT?

20 **PROSPECTIVE JUROR:** I SAY ONE WAS OAKLAND, ONE WAS
21 SANTA CLARA, AND ONE WAS SAN FRANCISCO.

22 **THE COURT:** YOU'VE MOVED AROUND A LOT THEN?

23 **PROSPECTIVE JUROR:** I'VE HAD A FEW HOUSES.

24 **THE COURT:** NOW, IN TERMS OF -- YOU CHECKED THE BOX
25 THAT YOU TESTIFIED IN A TRIAL; IS THAT RIGHT?

1 **PROSPECTIVE JUROR:** YES.

2 **THE COURT:** CAN YOU TELL US A LITTLE BIT ABOUT YOUR
3 EXPERIENCE TESTIFYING?

4 **PROSPECTIVE JUROR:** I JUST HAD TO VERIFY THAT THERE
5 WERE RECKLESS DRIVING GOING ON, ON A STREET IN FRONT OF MY
6 HOUSE. SPEEDING AND THAT TYPE OF STUFF.

7 **THE COURT:** OKAY.

8 AND THEN YOU'VE ALSO HAD TO BE INVOLVED IN A LAWSUIT WITH
9 RESPECT TO TRYING TO GET BACK RENT FROM A TENANT. CAN YOU
10 TELL US ABOUT THAT?

11 **PROSPECTIVE JUROR:** YES. THEY WERE ALMOST A YEAR IN
12 ARREARS.

13 **THE COURT:** WE'RE GETTING A LOT OF BACK --

14 **THE CLERK:** YOU KNOW WHAT? IF I TURN IT DOWN, WE
15 CAN'T HEAR HIM. THE ONLY WAY I CAN DO IT IS TO TURN THAT DOWN
16 AND TRY TO GET THAT OUT.

17 **THE COURT:** LET'S HOLD OFF THEN.

18 SO -- JUST HOLD THE MIC A LITTLE BIT LOWER.

19 **PROSPECTIVE JUROR:** LITTLE LOWER?

20 **THE COURT:** LET'S SEE IF THAT WORKS.

21 WERE YOU ABLE TO GET YOUR CASE RESOLVED IN STATE COURT?

22 **PROSPECTIVE JUROR:** THEY WERE SUPPOSED TO PAY ME BUT
23 THEY NEVER DID.

24 **THE COURT:** BUT YOU WERE ABLE TO GET A JUDGMENT?

25 **PROSPECTIVE JUROR:** YES, I GOT A JUDGMENT.

1 **THE COURT:** WERE YOU ABLE TO EVICT THE PERSON?

2 **PROSPECTIVE JUROR:** I WAS.

3 **THE COURT:** NOW, YOU NOTED THAT YOU THOUGHT DAMAGES
4 AWARDS FROM CIVIL LAWSUITS WERE TOO HIGH. CAN YOU TELL ME
5 YOUR THOUGHTS ON THAT TOPIC?

6 **PROSPECTIVE JUROR:** I JUST THINK, IN GENERAL, THEY
7 SEEM EXCESSIVE.

8 **THE COURT:** IS THERE ANYTHING IN PARTICULAR THAT
9 LEADS YOU TO THAT CONCLUSION?

10 **PROSPECTIVE JUROR:** JUST MY EXPERIENCES.

11 **THE COURT:** YOUR EXPERIENCES? OKAY.

12 ALL RIGHT. THANK YOU, MR. CAMP.

13 MS. COOPER?

14 **PROSPECTIVE JUROR:** YES.

15 **THE COURT:** GOOD MORNING.

16 **PROSPECTIVE JUROR:** GOOD MORNING.

17 **THE COURT:** SO, CAN YOU TELL ME WHAT YOUR ROLE IS AT
18 STANFORD?

19 **PROSPECTIVE JUROR:** SURE. I'M A SOCIOLOGIST AT A
20 RESEARCH INSTITUTE THAT FOCUSES ON GENDER.

21 **THE COURT:** OKAY. SO YOU'RE DOING RESEARCH? YOU
22 NOTED YOU WERE A MANAGER, SO I WAS TRYING TO UNDERSTAND.

23 **PROSPECTIVE JUROR:** I AM. I HAVE ONE RESEARCHER WHO
24 REPORTS TO ME, THAT I DO RESEARCH AND WRITING.

25 **THE COURT:** OKAY. AND THEN YOU'VE ALSO -- YOU WERE

1 ON A DUI CASE; IS THAT RIGHT?

2 PROSPECTIVE JUROR: YES.

3 THE COURT: AND WAS THERE A VERDICT IN THAT --

4 PROSPECTIVE JUROR: YES. GUILTY.

5 THE COURT: WERE YOU THE FOREPERSON?

6 PROSPECTIVE JUROR: (SHAKES HEAD.)

7 THE COURT: NO?

8 PROSPECTIVE JUROR: NO.

9 THE COURT: I HAVE TO MAKE SURE. YOU NOD YOUR HEAD,
10 I HAVE WORDS SO WE CAN NOTE IT ON THE TRANSCRIPT.

11 OKAY. AND THEN YOU KNOW SOMEONE WHO IS ON YOUR RESEARCH
12 PROJECT WHO HAD PROBLEMS WITH A DEBT COLLECTOR MAYBE? COULD
13 YOU GIVE US --

14 PROSPECTIVE JUROR: I WROTE A BOOK ON FINANCIAL
15 INSECURITY AND ONE -- FOR THE RESEARCH, I FOLLOWED AROUND
16 SEVERAL FAMILIES AND I INTERVIEWED HUNDRED FAMILIES, AND ONE
17 OF THE FAMILIES I FOCUSED ON IN MY BOOK IS A FAMILY WHO WAS
18 EXPERIENCING DOWNWARD MOBILITY AND WAS RECEIVING PHONE CALLS
19 FROM DEBT COLLECTORS FREQUENTLY. AND SO I WAS THERE TO SEE
20 THOSE CALLS AND I WRITE ABOUT IT IN MY BOOK, THE IMPACT OF
21 THOSE CALLS.

22 THE COURT: OKAY. NOW, DO YOU KNOW WHETHER THE -- AS
23 PART OF YOUR RESEARCH, DID YOU EVER ENCOUNTER THE DEFENDANT?

24 PROSPECTIVE JUROR: NO, NOT THAT I KNOW OF.

25 THE COURT: AND IN THOSE CALLS WITH RESPECT TO THOSE

1 FAMILIES, WAS THERE EVER AN ALLEGATION THAT THE DEBT COLLECTOR
2 DIDN'T HAVE CONSENT TO CALL THE INDIVIDUALS?

3 **PROSPECTIVE JUROR:** THAT DIDN'T COME UP IN MY
4 OBSERVATIONS.

5 **THE COURT:** OKAY. WHAT WAS YOUR CONCLUSION? IF --
6 TO THE EXTENT THERE WAS ONE?

7 **PROSPECTIVE JUROR:** SO, THIS IS BASED ON BOTH THE
8 RESEARCH THAT I'VE DONE AND MY EXPERTISE AND SORT OF ECONOMIC
9 INSECURITY AND BANKRUPTCY MORE BROADLY IS THAT OFTENTIMES THE
10 TACTICS ARE QUITE AGGRESSIVE.

11 **THE COURT:** OKAY.

12 **PROSPECTIVE JUROR:** WHAT I SAW, IT WAS CAUSING --
13 THERE WERE MANY THINGS GOING WRONG FOR THIS FAMILY. THIS IS
14 ONE OF THEM BUT IT WAS A PARTICULAR POIGNANT MOMENT AS I HEARD
15 THE PERSON I WAS RESEARCHING EXPLAIN WHY SHE COULDN'T PAY IT
16 BACK AND --

17 **THE COURT:** RIGHT.

18 **PROSPECTIVE JUROR:** YEAH.

19 **THE COURT:** AND WHEN WAS THAT BOOK PUBLISHED?

20 **PROSPECTIVE JUROR:** 2014.

21 **THE COURT:** NOW, THERE ISN'T ANY -- IN THIS CASE,
22 IT'S A DIFFERENT KIND OF CASE WITH RESPECT TO THE CLAIMS ARE
23 THAT THE TELEPHONE CALLS WERE MADE WITHOUT CONSENT.

24 **PROSPECTIVE JUROR:** YES.

25 **THE COURT:** SO THERE ISN'T AN ALLEGATION OF

1 HARASSMENT OR ANYTHING LIKE THAT. DO YOU THINK, BASED UPON
2 YOUR EXPERIENCE, THAT YOU WOULD NOT BE ABLE TO TREAT THE
3 DEFENDANT FAIRLY IN THIS CASE?

4 **PROSPECTIVE JUROR:** I WOULD HOPE I CAN. I MEAN, THAT
5 WOULD BE MY EXPECTATION OF MYSELF. BUT I DO JUST WANT TO BE
6 VERY UPFRONT THAT I KNOW PROBABLY MORE THAN THE AVERAGE PERSON
7 ABOUT BANKRUPTCY AND ECONOMIC INSECURITY AND THE CAUSES AND
8 EXPERIENCES. SO I THINK I CAN BE A REASONABLE AND IMPARTIAL
9 JUROR, BUT OTHER PEOPLE SHOULD JUST KNOW THAT THAT'S WHERE I
10 COME FROM.

11 **THE COURT:** RIGHT. DID YOU EVER HAVE ANY OCCASION TO
12 LEARN ABOUT THE SPECIFIC TELEPHONE SYSTEMS THAT THEY USE IN
13 THESE KINDS OF OPERATIONS?

14 **PROSPECTIVE JUROR:** NO. I JUST KNOW MORE ABOUT THE
15 EMPLOYEE SIDE OF IT AS WELL. THERE IS A FAIR AMOUNT OF
16 RESEARCH ABOUT PEOPLE WHO WORK IN THE ACTUAL JOB OF A DEBT
17 COLLECTOR AND WHAT THAT IS LIKE AS WELL. SO, THAT IS -- TO
18 THE DEGREE THAT I WOULD KNOW ANYTHING ABOUT IT, IT'S FROM THAT
19 LENS.

20 **THE COURT:** OKAY. NOW, YOUR HUSBAND IS -- OR YOUR
21 SPOUSE, I SHOULD SAY, IS IN BIOTECH?

22 **PROSPECTIVE JUROR:** UH-HUH.

23 **THE COURT:** THAT IS YES?

24 **PROSPECTIVE JUROR:** YES.

25 **THE COURT:** AND THAT'S -- WHERE IS THE BIOTECH

1 COMPANY LOCATED?

2 **PROSPECTIVE JUROR:** SOUTH SAN FRANCISCO.

3 **THE COURT:** OKAY. SO AS YOU SAW, OR AS YOU HEARD, IF
4 YOU WERE SELECTED TO BE AS A JUROR, YOU WOULD BE DONE BY
5 1:30 IN THE AFTERNOON --

6 **PROSPECTIVE JUROR:** YES.

7 **THE COURT:** -- WHICH WOULD GET YOU BACK TO THE SOUTH
8 BAY --

9 **PROSPECTIVE JUROR:** YES.

10 **THE COURT:** -- WELL BEFORE 5:00 O'CLOCK.

11 **PROSPECTIVE JUROR:** HARD PART WOULD BE THE MORNINGS
12 TO GET HERE BY 8:30.

13 **THE COURT:** IS THERE SOME REASON YOUR HUSBAND CAN'T
14 TAKE YOUR KIDS TO SCHOOL?

15 **PROSPECTIVE JUROR:** MOST DAYS HE CAN. IT IS JUST IF
16 HE ENDS UP NEEDING TO TRAVEL FOR WORK. ASSUMING THIS CASE IS
17 A SHORTER CASE, I THINK THIS IS POSSIBLE.

18 **THE COURT:** OKAY.

19 **PROSPECTIVE JUROR:** I AM FLAGGING THAT IT WOULD START
20 TO NOT BE POSSIBLE AT A CERTAIN POINT.

21 **THE COURT:** OKAY. GREAT. ALL RIGHT. THANK YOU.

22 OKAY. NOW, YOU ARE GOING TO HAVE TO TELL ME HOW TO
23 PRONOUNCE YOUR LAST NAME.

24 **PROSPECTIVE JUROR:** GHASEMIGO HAR. YOU CAN CALL ME
25 GOHAR, IF IT IS SHORTER.

1 **THE COURT:** GOHAR?

2 **PROSPECTIVE JUROR:** YES.

3 **THE COURT:** THANK YOU.

4 SO YOU SAID YOU HAVE -- WHEN DID YOU COME FROM IRAN?

5 **PROSPECTIVE JUROR:** 2010.

6 **THE COURT:** AND YOU SAID YOU HAD SOME COLLEGE. WAS
7 IT IN IRAN OR HERE IN THE STATES?

8 **PROSPECTIVE JUROR:** HERE IN SOUTHERN CALIFORNIA, LOS
9 ANGELES.

10 **THE COURT:** WHAT KINDS OF CLASSES DID YOU TAKE?

11 **PROSPECTIVE JUROR:** BUSINESS ADMINISTRATIVE.

12 **THE COURT:** OKAY. AND WHAT IS YOUR CURRENT
13 OCCUPATION?

14 **PROSPECTIVE JUROR:** I'M A STAY-AT-HOME MOM.

15 **THE COURT:** OKAY. AND ARE YOU -- AND YOU ARE MARRIED
16 AND SAME KINDS OF QUESTIONS. YOUR HUSBAND IS A SOFTWARE
17 ENGINEER FOR WHOM?

18 **PROSPECTIVE JUROR:** MACYS.COM.

19 **THE COURT:** HOW DO YOU SPELL THAT?

20 **PROSPECTIVE JUROR:** MACY'S.

21 **THE COURT:** OH, MACY'S. AND WHERE IS HIS HOME BASE?

22 **PROSPECTIVE JUROR:** IT IS HERE IN DOWNTOWN
23 SAN FRANCISCO BUT HE HAS TO TRAVEL A LOT BECAUSE OF HIS JOB.
24 AND SOMETIMES BECAUSE OF THE TRAINING PURPOSES AND RIGHT NOW
25 HE IS OUT OF TOWN. OUT OF THE STATE ACTUALLY.

1 **THE COURT:** DOES ANYONE ELSE LIVE WITH YOU?

2 **PROSPECTIVE JUROR:** NO. RIGHT NOW MY NEIGHBOR IS
3 WATCHING MY THREE YEAR OLD.

4 **THE COURT:** AND DOES YOUR CHILD GO TO DAYCARE?

5 **PROSPECTIVE JUROR:** HE'S TAKING ONLY TWO DAYS AND FOR
6 THREE HOURS, SO IT IS VERY PART TIME THAT I HAVE TO DROP HIM
7 OFF AND PICK HIM UP.

8 **THE COURT:** OKAY. DO YOU KNOW YOUR HUSBAND'S
9 SCHEDULE FOR THE NEXT WEEK?

10 **PROSPECTIVE JUROR:** HE WILL COME, I THINK, NEXT
11 THURSDAY. I MEAN, I KNOW HE IS COMING BACK NEXT THURSDAY.

12 **THE COURT:** OKAY. AND DID YOU HAVE ANY OPINIONS
13 ON -- IT LOOKS LIKE YOU DON'T HAVE ANY OPINIONS ON WHETHER
14 THERE ARE TOO MANY LAWSUITS OR DAMAGES ARE TOO HIGH, ANYTHING
15 LIKE THAT?

16 **PROSPECTIVE JUROR:** WELL -- YES, NO OPINION. NO
17 EXPERIENCE.

18 **THE COURT:** AND NO FAMILY IN THE AREA?

19 **PROSPECTIVE JUROR:** NO.

20 **THE COURT:** OKAY. THANK YOU.

21 MR. GOEL?

22 **PROSPECTIVE JUROR:** GOOD MORNING, YOUR HONOR.

23 **THE COURT:** DID I SAY THAT RIGHT?

24 **PROSPECTIVE JUROR:** THAT'S RIGHT.

25 **THE COURT:** SO YOU HAVE YOUR JD.

1 **PROSPECTIVE JUROR:** YES.

2 **THE COURT:** HERE IS YOUR CHANCE TO BE A JUROR.

3 ARE YOU PRACTICING LAW OR YOU ARE DOING BUSINESS STRATEGY
4 WORK?

5 **PROSPECTIVE JUROR:** I WORK FOR A STARTUP AT THE
6 MOMENT. I WAS AN ATTORNEY LITIGATING FOR FIVE YEARS.

7 **THE COURT:** WHEN DID YOU GET YOUR JD?

8 **PROSPECTIVE JUROR:** 2010.

9 **THE COURT:** AND SO YOU WENT IN-HOUSE AFTER BEING AT
10 KIRKLAND AND DAVIS, RIGHT?

11 **PROSPECTIVE JUROR:** YES, MA'AM.

12 **THE COURT:** AND WERE YOU LITIGATING WHEN YOU WERE AT
13 THE FIRMS?

14 **PROSPECTIVE JUROR:** YES, MA'AM.

15 **THE COURT:** AND NOW YOU'RE DOING WHAT? YOU DIDN'T
16 NOTE THAT YOU ARE A GC.

17 **PROSPECTIVE JUROR:** CORRECT. I HEAD UP BUSINESS
18 DEVELOPMENT. I DO SOME -- MOST OF THE LEGAL WORK FOR THE
19 COMPANY AS WELL BUT NOT IN A FORMAL TITLE CAPACITY.

20 **THE WITNESS:** OF A GENERAL COUNSEL.

21 **PROSPECTIVE JUROR:** IT IS 20-PERSON COMPANY, SO WE
22 WEAR A LOT OF HATS.

23 **THE COURT:** YES.

24 OKAY. DO YOU HAVE -- YOUR THOUGHTS ABOUT TOO MANY
25 LAWSUITS, GIVEN THAT YOU WERE LITIGATING THOSE LAWSUITS? WHAT

1 ARE YOUR THOUGHTS ON THAT TOPIC?

2 **PROSPECTIVE JUROR:** MY PRACTICE IS PRIMARILY
3 HIGH-TECH PATENT LITIGATION DEFENSE. SO I THINK IT'S
4 REASONABLE THAT I WOULD THINK THERE ARE A LOT OF LAWSUITS
5 AGAINST MY CLIENTS AND FORMER CLIENTS --

6 **THE COURT:** I WOULD AGREE.

7 **PROSPECTIVE JUROR:** -- AND THE DAMAGES AGAINST THEM
8 THAT WERE AWARDED WERE TOO HIGH.

9 **THE COURT:** ANY CONCERNS ABOUT SITTING ON THIS CASE?

10 **PROSPECTIVE JUROR:** ABSOLUTELY NOT. I WOULD MERELY
11 ASK THAT I'M SCHEDULED TO GO TO SMALL CLAIMS COURT NEXT
12 FRIDAY, IF YOU COULD PROVIDE LEAVE TO HAVE THAT PUSHED BACK
13 SOMEHOW.

14 **THE COURT:** I THINK WE WILL PROBABLY BE DONE BY THEN.
15 THANK YOU, SIR.

16 MS. GUIDI? HOW DO I SAY IT?

17 **PROSPECTIVE JUROR:** GUIDI. GOOD MORNING, YOUR HONOR.

18 **THE COURT:** GOOD MORNING.

19 OKAY. SO DID YOU GET YOUR DEGREE FROM -- WELL, I GUESS
20 YOU DID. YOU RECEIVED A BUSINESS FINANCE DEGREE FROM BOSTON
21 UNIVERSITY?

22 **PROSPECTIVE JUROR:** THAT'S RIGHT.

23 **THE COURT:** AND YOU SAY YOU ARE AN INDEPENDENT
24 CONTRACTOR. CAN YOU TELL ME MORE ABOUT WHAT YOU DO?

25 **PROSPECTIVE JUROR:** SURE. I WORK FOR CISCO AS AN

1 INDEPENDENT CONTRACTOR. IT'S -- WITH INTERNET SECURITY.

2 **THE COURT:** OKAY.

3 **PROSPECTIVE JUROR:** I NORMALLY WORK FROM HOME AND
4 I'M -- RIGHT NOW I HAVE TWO KIDS IN COLLEGE, ONE OF THEM GOING
5 TO JUNIOR COLLEGE AND I'M TRYING TO KEEP CLOSE TABS ON HIM AND
6 MAKING SURE THAT HE IS ACTUALLY GOING TO CLASS. SO THAT IS
7 ONE OF MY CONCERNS WITH BEING HERE.

8 THE OTHER THING IS THAT, IF I'M NOT WORKING, I'M NOT
9 GETTING PAID. BUT I DO FEEL THAT I HAVE -- I RESPECT MY RIGHT
10 TO PERFORM MY CIVIC DUTY AS A JUROR BUT I'M A LITTLE WORRIED
11 ABOUT IT.

12 **THE COURT:** OKAY.

13 WELL, I APPRECIATE UNDERSTANDING YOUR PERSPECTIVE AND I
14 THINK IT'S IMPORTANT FOR THE PARTIES TO AS WELL. IT SAYS YOU
15 WERE A JUROR IN A STATE COURT CRIMINAL CASE?

16 **PROSPECTIVE JUROR:** (NODS HEAD.)

17 **THE COURT:** CAN YOU TELL ME ABOUT THAT ONE?

18 **PROSPECTIVE JUROR:** ACTUALLY I WASN'T. I WAS ALMOST
19 SELECTED AND THEN I WASN'T. THEN I REALIZED THAT DIDN'T
20 COUNT.

21 **THE COURT:** OKAY. GREAT. NOW, YOUR EXPERIENCE WITH
22 DEBT COLLECTORS TO THE EXTENT -- OR FAMILY, CAN YOU TELL ME
23 ABOUT THAT EXPERIENCE?

24 **PROSPECTIVE JUROR:** YEAH. I HAD A CLAIM AGAINST ME
25 ONCE. THEY HAD MY ADDRESS WRONG, SO I WASN'T GETTING THE

1 BILLS. AND THEN SO WHEN IT WENT TO DEBT COLLECTION, THEY
2 CONTACTED ME. MIRACULOUSLY, THEY WERE ABLE TO FIND MY
3 ADDRESS. AND THEN I JUST PAID THE BILL AND IT WAS DONE.

4 **THE COURT:** ANYTHING ABOUT THAT EXPERIENCE THAT MIGHT
5 LEAD YOU TO HARBOR ANY ILL FEELINGS AGAINST THE DEFENDANT?

6 **PROSPECTIVE JUROR:** THE ONLY THING THAT I WAS UPSET
7 ABOUT, ACTUALLY, WAS THAT I DIDN'T FEEL LIKE ANY OF THIS --
8 ANY OF WHAT HAPPENED WAS ANYTHING THAT I HAD DONE ON MY PART.
9 I FELT LIKE IT WAS INFORMATION THAT WAS TAKEN DOWN WRONG AND
10 SO I NEVER RECEIVED THE INFORMATION. AND I TRIED TO GET IT
11 CLEARED AND I COULDN'T GET IT CLEARED. THEY SAID TOO BAD. SO
12 I WAS A LITTLE RESENTFUL ABOUT THAT BECAUSE NOW I HAVE THIS ON
13 MY RECORD. OTHERWISE I HAVE A PERFECT RECORD, SO....

14 **THE COURT:** IS THAT WITH THE CREDIT AGENCIES THAT YOU
15 COULDN'T GET IT CLEARED AS OPPOSED TO THE DEBT COLLECTORS --

16 **PROSPECTIVE JUROR:** IT WAS -- WELL, IT WAS THE DEBT
17 COLLECTOR.

18 **THE COURT:** OKAY. WAS IT THIS PARTICULAR COMPANY,
19 RASH CURTIS?

20 **PROSPECTIVE JUROR:** NO, IT WAS NOT.

21 **THE COURT:** OKAY. DO YOU THINK YOU CAN BE FAIR TO
22 THEM, GIVEN THAT IT IS NOT THE COMPANY THAT TREATED YOU NOT
23 IDEALLY?

24 **PROSPECTIVE JUROR:** I DON'T GROUP THEM ALL TOGETHER.
25 I THINK EVERYBODY IS INDEPENDENT AND, YOU KNOW, EVERY

1 SITUATION.

2 **THE COURT:** YOU WERE INVOLVED IN A LAWSUIT. CAN YOU
3 TELL ME A LITTLE BIT ABOUT THAT?

4 **PROSPECTIVE JUROR:** YEAH. THAT WAS A REALLY LONG
5 TIME AGO. I JUST -- I WENT TO A RESTAURANT AND IMMEDIATELY
6 CAME DOWN WITH SALMONELLA. AND, AT THE TIME, I WAS REALLY
7 YOUNG, JUST GRADUATED FROM COLLEGE, JUST STARTED A NEW JOB AND
8 I COULDN'T WORK. AND I WAS ALMOST AT THE POINT WHERE THEY
9 WEREN'T GOING TO KEEP ME HIRED ON ANYMORE BECAUSE I HAD JUST
10 STARTED AND I THOUGHT I WAS GOING TO DIE.

11 AND SO I JUST SUED THEM TO COMPENSATE MY LOSS OF INCOME
12 BECAUSE I WASN'T GETTING PAID ANY SICK TIME AND THAT WAS IT.

13 **THE COURT:** DID IT RESOLVE IN A WAY THAT WAS
14 SATISFACTORY?

15 **PROSPECTIVE JUROR:** YEAH. YES.

16 **THE COURT:** THANK YOU. ALL RIGHT.

17 SIR, IF YOU CAN TELL ME HOW TO PRONOUNCE YOUR NAME.

18 **PROSPECTIVE JUROR:** CHRISTIAN HINDERLIE. GOOD
19 MORNING.

20 **THE COURT:** HINDERLIE.

21 **PROSPECTIVE JUROR:** HINDERLIE.

22 **THE COURT:** WHERE DID YOU GO TO HIGH SCHOOL?

23 **PROSPECTIVE JUROR:** IRVINGTON HIGH SCHOOL IN FREMONT.

24 **THE COURT:** SO YOU HAVE BEEN LOCAL HERE FOR A WHILE?

25 **PROSPECTIVE JUROR:** CORRECT.

1 **THE COURT:** CAN YOU TELL ME ABOUT THE LAWSUIT THAT
2 YOU WERE INVOLVED IN WITH RESPECT TO YOUR BACK INJURY?

3 **PROSPECTIVE JUROR:** SURE. I SUSTAINED A BACK INJURY
4 WHILE AT WORK. WENT HOME, SAW THE DOCTOR, AND IT WAS
5 DETERMINED IT WAS PART OF, YOU KNOW, WORKERS COMPENSATION.
6 AND SO WHAT HAPPENED WAS I HAD MADE AN APPOINTMENT WITH THE
7 DOCTOR AND THE COMPANY THAT I WORKED FOR GOT INVOLVED AND
8 CANCELED THAT APPOINTMENT. SO, BASICALLY, MY HANDS WERE TIED.
9 I WAS LAID UP COMPLETELY, BASICALLY CRIPPLED, COULDN'T WALK,
10 COULDN'T SIT, AND SO IT WAS SOMETHING, UNFORTUNATELY, I HAD TO
11 DO.

12 **THE COURT:** SO -- IS IT -- IT IS STILL THE SAME
13 COMPANY YOU ARE WORKING FOR?

14 **PROSPECTIVE JUROR:** THAT'S CORRECT.

15 **THE COURT:** DID IT RESOLVE ITSELF? HOW LONG AGO WAS
16 IT?

17 **PROSPECTIVE JUROR:** YES. THANKFULLY. BODY IS
18 AMAZING, HEALS ITSELF, AND I WAS ABLE TO CONTINUE ON AND WORK
19 FOR THAT COMPANY.

20 **THE COURT:** WHEN DID THIS HAPPEN?

21 **PROSPECTIVE JUROR:** THAT WAS IN 2015.

22 **THE COURT:** DID YOU ACTUALLY HAVE TO FILE SUIT?

23 **PROSPECTIVE JUROR:** WE WERE ABLE TO, YOU KNOW, SETTLE
24 OUT OF COURT.

25 **THE COURT:** OKAY. OKAY. DO YOU HAVE ANY CONCERNS

1 ABOUT SITTING ON THE JURY?

2 PROSPECTIVE JUROR: NO CONCERNS.

3 THE COURT: OKAY. THANK YOU, MR. HINDERLIE.

4 OKAY.

5 PROSPECTIVE JUROR: HUIZINGH.

6 THE COURT: HUIZINGH. GOOD MORNING, SIR.

7 PROSPECTIVE JUROR: GOOD MORNING.

8 THE WITNESS: SO, WHY DOES SOMEONE COME TO CALIFORNIA
9 FROM HAWAII? HAWAII SEEMS PRETTY GOOD.

10 PROSPECTIVE JUROR: I KEEP ASKING MYSELF THAT EVERY
11 DAY.

12 THE COURT: SO YOU CAME TO CALIFORNIA ABOUT NINE
13 YEARS AGO?

14 PROSPECTIVE JUROR: YEAH, THAT'S CORRECT.

15 THE COURT: AND YOU'RE -- IN TERMS OF BEING AN
16 ACCOUNTANT, I GUESS WE ARE LUCKY BECAUSE IT IS PAST
17 APRIL 15TH.

18 PROSPECTIVE JUROR: YES. I HAD TO GET A POSTPONEMENT
19 FOR THIS ONE.

20 THE COURT: ARE YOU IN YOUR OWN COMPANY? I MEAN,
21 YOU'RE SELF-EMPLOYED?

22 PROSPECTIVE JUROR: THAT IS CORRECT.

23 THE COURT: LET'S SEE. CAN YOU TELL ME ABOUT YOUR
24 EXPERIENCE WITH DEBT COLLECTORS?

25 PROSPECTIVE JUROR: JUST MAINLY UNPAID BILLS, YEAH.

1 JUST RECENTLY HAD ONE, SO IT IS KIND OF FRESH FOR ME.

2 **THE COURT:** ANY INTERACTION WITH THE DEFENDANT IN
3 THIS CASE?

4 **PROSPECTIVE JUROR:** NOT -- I'M NOT SURE. I DID WORK
5 WITH DEBT COLLECTORS ON IT BUT I CAN'T REMEMBER THE NAME OF
6 THEM.

7 **THE COURT:** OKAY. IN TERMS OF THAT INTERACTION WITH
8 THE DEBT COLLECTORS, IS THERE ANYTHING ABOUT THAT EXPERIENCE
9 THAT WOULD LEAD YOU TO NOT TREAT THE DEFENDANT HERE FAIRLY?

10 **PROSPECTIVE JUROR:** I DON'T THINK SO. THEY WERE
11 JUST -- I WASN'T A BIG FAN OF THE WHOLE PROCESS BUT I DON'T
12 THINK THAT WOULD AFFECT MY JUDGMENT HERE.

13 **THE COURT:** DID THE PEOPLE WHO WERE CALLING YOU --
14 WELL, YOU ACKNOWLEDGED YOU HAD DEBT. IT WASN'T -- THESE
15 WEREN'T PHONE CALLS THAT WERE JUST OUT OF THE BLUE, RANDOM
16 PHONE CALLS, I TAKE IT?

17 **PROSPECTIVE JUROR:** THEY WERE RANDOM FOR ME, JUST
18 BECAUSE I DIDN'T GET THE BILL AND THEY SENT IT TO ME ABOUT A
19 YEAR LATER AND THEN I WAS ALREADY IN COLLECTIONS AT THAT TIME.

20 **THE COURT:** I SEE.

21 **PROSPECTIVE JUROR:** YEAH.

22 **THE COURT:** AND WERE YOU ABLE TO RESOLVE IT?

23 **PROSPECTIVE JUROR:** I RESOLVED IT WITH -- IT WAS WITH
24 A HOSPITAL, MEDICAL BILLS. SO I JUST RESOLVED IT WITH THEM
25 BECAUSE I COULDN'T GET IT FIGURED OUT WITH THE DEBT

1 COLLECTORS.

2 **THE COURT:** AND WHICH HOSPITAL WAS IT?

3 **PROSPECTIVE JUROR:** SAINT JOSEPH.

4 **THE COURT:** OKAY. NOW, YOU SAY THAT YOU BELIEVE
5 THERE ARE TOO MANY LAWSUITS. WHERE DOES THAT BELIEF COME
6 FROM?

7 **PROSPECTIVE JUROR:** I JUST BELIEVE IN DOING THE RIGHT
8 THING. IF YOU DO THE RIGHT THING, YOU PROBABLY WON'T SEE
9 THESE LAWSUITS.

10 **THE COURT:** ANY CONCERNS ABOUT SERVING ON THE JURY?

11 **PROSPECTIVE JUROR:** SOME OF THE NAMES BECAUSE I
12 PREPARE TAX RETURNS FOR A FIRM IN SAN RAFAEL. SOME OF THE
13 NAMES LOOK FAMILIAR BUT I DON'T KNOW ANY OF THEM, I DON'T
14 BELIEVE. BUT WE DEAL WITH A LOT OF INDIVIDUAL RETURNS SO SOME
15 OF THOSE LAST NAMES LOOK KIND OF FAMILIAR.

16 **THE COURT:** PRIMARILY PEOPLE FROM SAN RAFAEL.

17 **PROSPECTIVE JUROR:** NO. THEY ARE MAINLY FROM THE
18 CITY, OAKLAND, SAN FRANCISCO.

19 **THE COURT:** OKAY. THANK YOU.

20 MS. JEW? MUCH EASIER NAME THAN SOME OF THE NAMES.

21 **PROSPECTIVE JUROR:** THAT'S TRUE.

22 **THE COURT:** GOOD MORNING.

23 **PROSPECTIVE JUROR:** GOOD MORNING.

24 **THE COURT:** NOW, I SAW YOUR NOTE HERE ABOUT NEEDING
25 TO BE OUT OF TOWN ON THE 18TH. WE WILL DEFINITELY BE DONE BY

1 THEN, SO THAT IS NOT A CONCERN.

2 **PROSPECTIVE JUROR:** MY CONCERN WAS THE FRIDAY --

3 **THE COURT:** WE SHOULD BE DONE. WE SHOULD BE DONE.

4 OKAY. YOU'VE NEVER SERVED ON A JURY, SO THIS IS YOUR
5 OPPORTUNITY.

6 **PROSPECTIVE JUROR:** RIGHT.

7 **THE COURT:** DO YOU HAVE ANY CONCERNS GIVEN THE TOPICS
8 WE HAVE BEEN TALKING ABOUT ABOUT SERVING ON THIS JURY?

9 **PROSPECTIVE JUROR:** NO.

10 **THE COURT:** NO?

11 **PROSPECTIVE JUROR:** HUH-UH.

12 **THE COURT:** ANYTHING TO -- ANYTHING THAT YOU THINK
13 THE PARTIES MIGHT WANT TO KNOW ABOUT YOU IN TERMS OF YOUR
14 ABILITY TO BE FAIR AND IMPARTIAL?

15 **PROSPECTIVE JUROR:** WELL, I'VE HAD TO DELIBERATE SIX
16 CHILDREN THAT I RAISED.

17 **THE COURT:** WELL, I TELL YOU, BEING A PARENT IS AN
18 IMPORTANT SKILL. I TAKE IT -- YOU KNOW, BECAUSE PEOPLE ARE
19 GOING TO DISAGREE ABOUT FACTS. AND I'M SURE -- HAVE YOU EVER
20 HAD A CIRCUMSTANCE WHERE YOU HAD ONE CHILD SAY ONE THING AND
21 THE OTHER CHILD SAY THE OTHER THING, RIGHT?

22 LIKE MOST OF US YOU HAVE TO WAIT TO GET ALL THE
23 INFORMATION BEFORE MAKING A DECISION. DO YOU WORK WELL IN
24 GROUPS?

25 **PROSPECTIVE JUROR:** YES, I BELIEVE SO.

1 **THE COURT:** AND AS A REGISTERED NURSE, DID YOU HAVE
2 TO WORK IN TEAMS?

3 **PROSPECTIVE JUROR:** LONG -- YES, WHEN I DID.

4 **THE COURT:** OKAY. ALL RIGHT. TERRIFIC. WE ARE
5 GOING TO PASS IT ALL THE WAY OVER HERE, BACK TO MR. NICHOLAS.
6 GOOD MORNING, SIR.

7 **PROSPECTIVE JUROR:** GOOD MORNING.

8 **THE COURT:** SO WHAT KIND OF ENGINEERING WORK DO YOU
9 DO FOR E & M?

10 **PROSPECTIVE JUROR:** INDUSTRIAL AUTOMATION, TECH
11 SUPPORT.

12 **THE COURT:** WHAT DOES THAT MEAN, INDUSTRIAL
13 AUTOMATION?

14 **PROSPECTIVE JUROR:** ANYTHING THAT MOVES IN
15 MANUFACTURING OR WATER TREATMENT, FOOD PROCESSING. IT'S ALL
16 CONTROLLED BY CONTROL SYSTEMS, AND WE SELL THE HARDWARE AND
17 SOFTWARE THAT RUNS THOSE.

18 **THE COURT:** OKAY. AND -- DO YOU HAVE ANY CONCERNS
19 ABOUT SERVING ON THE JURY?

20 **PROSPECTIVE JUROR:** NO, I DON'T.

21 **THE COURT:** IT LOOKS LIKE YOU MANAGE INDIVIDUALS?

22 **PROSPECTIVE JUROR:** A FEW, YEAH.

23 **THE COURT:** SO, AS AN ENGINEER, SOMETIMES ENGINEERS
24 ARE VERY ISOLATED IN THEIR WORK VERSUS WORKING IN GROUPS. YOU
25 KNOW, KIND OF GOT BOTH TYPES. WHAT TYPE ARE YOU?

1 **PROSPECTIVE JUROR:** I CAN DO BOTH. RIGHT NOW, ME AND
2 MY TEAM, WE WORK INDIVIDUALLY BUT WE'RE WORKING WITH CUSTOMERS
3 OR GROUPS OF CUSTOMERS ALL THE TIME.

4 **THE COURT:** OKAY. AND I TAKE IT YOU MUST BE PRETTY
5 DETAIL-ORIENTED IF YOU ARE AN ENGINEER?

6 **PROSPECTIVE JUROR:** FAIRLY.

7 **THE COURT:** I HAVE A SON WHO IS AN AERONAUTICAL
8 ENGINEER AND HE IS VERY DETAIL-ORIENTED.

9 **PROSPECTIVE JUROR:** I HOPE SO.

10 **THE COURT:** OKAY. MR. NICHOLAS, ANY CONCERNS?

11 **PROSPECTIVE JUROR:** NONE.

12 **THE COURT:** ALL RIGHT. THANK YOU.

13 **PROSPECTIVE JUROR:** THANK YOU.

14 **THE COURT:** MS. ONG, GOOD MORNING.

15 **PROSPECTIVE JUROR:** GOOD MORNING.

16 **THE COURT:** SO DID YOU TAKE CLASSES AT STANFORD OR
17 DID YOU GET A DEGREE FROM STANFORD? WHERE DID THE STANFORD
18 LINGUISTICS PIECE, HOW DID THAT WORK?

19 **PROSPECTIVE JUROR:** I GOT A DEGREE AT STANFORD IN
20 LINGUISTICS, A BACHELOR'S.

21 **THE COURT:** OH, YOU DID GET A BACHELOR'S. YOU DIDN'T
22 WRITE THAT DOWN.

23 **PROSPECTIVE JUROR:** SORRY.

24 **THE COURT:** THAT'S OKAY. WHAT IS YOUR ROLE AS A
25 PROJECT MANAGER FOR THE TECHNOLOGY COMPANY HERE?

1 **PROSPECTIVE JUROR:** MERCENARY TECHNOLOGY IS A SMALL
2 FIRM THAT SPECIALIZES IN ENGINEERING FOR VIDEO GAMES. SO AS A
3 PROJECT MANAGER, I'M PRETTY MUCH IN CHARGE OF, YOU KNOW,
4 WHATEVER IT TAKES. SO MANAGING QA TESTERS, SCHEDULING,
5 COMMUNICATING WITH THE CLIENTS, DOCUMENTATION.

6 **THE COURT:** SO HOW DOES ONE GET FROM LINGUISTICS TO
7 VIDEO GAMES? I MEAN, IT IS FASCINATING. HOW DID YOU DO THAT?

8 **PROSPECTIVE JUROR:** WELL, WHEN I GRADUATED IN
9 LINGUISTICS, THERE WERE ONLY THREE REAL AVENUES, OBVIOUSLY, AT
10 THE TIME. THERE WAS LIKE THE CIA, THE FOREIGN SERVICE -- YOU
11 KNOW, THE STATE DEPARTMENT, AND LIKE A TRANSLATOR. BUT I'VE
12 ALWAYS BEEN FASCINATED BY GAMES AND BY COMPUTERS, SO I MANAGED
13 TO LUCK INTO THE INDUSTRY, SO....

14 **THE COURT:** THAT'S GREAT. IT SOUNDS LIKE YOU HAD TO
15 GIVE A DEPOSITION IN A CIVIL CASE. CAN YOU TELL ME ABOUT
16 THAT?

17 **PROSPECTIVE JUROR:** IT WAS A SMALL STARTUP COMPANY
18 AND, ESSENTIALLY, WAS ABOUT CONTROL OF THE COMPANY. THERE
19 WERE THREE CO-FOUNDERS AND, ESSENTIALLY, TWO OF THEM WERE
20 TRYING TO OUST THE THIRD.

21 **THE COURT:** PATENT CASE, IP CASE?

22 **PROSPECTIVE JUROR:** NO. JUST, YOU KNOW, CONTRACTUAL.

23 **THE COURT:** OKAY. DID YOU EVER HAVE TO TESTIFY IN
24 COURT?

25 **PROSPECTIVE JUROR:** NO.

1 **THE COURT:** DID THEY VIDEOTAPE YOUR DEPOSITION?

2 **PROSPECTIVE JUROR:** NO.

3 **THE COURT:** DO YOU HAVE ANY CONCERNS ABOUT SERVING?

4 **PROSPECTIVE JUROR:** NONE THAT I CAN THINK OF.

5 **THE COURT:** ALL RIGHT. THANK YOU, MS. ONG.

6 MS. RAFELLO?

7 **PROSPECTIVE JUROR:** YES.

8 **THE COURT:** GOOD MORNING.

9 **PROSPECTIVE JUROR:** GOOD MORNING.

10 **THE COURT:** WHAT KIND OF EVENT MANAGING DO YOU DO?

11 **PROSPECTIVE JUROR:** I PLAN EVENTS FOR CORPORATIONS.

12 **THE COURT:** CAN YOU GIVE ME A COUPLE OF EXAMPLES?

13 **PROSPECTIVE JUROR:** I PLAN EVENTS FOR GOOGLE,
14 BUSINESS-RELATED EVENTS.

15 **THE COURT:** SO YOU PLAN THE DINNER OR THE CONFERENCE?
16 WHAT IS IT YOU ARE PLANNING?

17 **PROSPECTIVE JUROR:** ALL OF THE ABOVE.

18 **THE COURT:** AND IT LOOKS LIKE YOU'VE BEEN DOING THIS
19 NOW AT A MINIMUM FOR FOUR YEARS OR SO?

20 **PROSPECTIVE JUROR:** YES.

21 **THE COURT:** OKAY. DO YOU HAVE ANY CONCERNS ABOUT
22 SERVING ON THE JURY?

23 **PROSPECTIVE JUROR:** JUST THAT I HAVE AN EVENT ON
24 MONDAY AFTERNOON BUT I THINK, IF WE'RE OUT BY 1:30, I CAN MAKE
25 IT.

1 **THE COURT:** OKAY.

2 THIS COMING MONDAY?

3 **PROSPECTIVE JUROR:** UH-HUH.

4 **THE COURT:** THAT'S A YES?

5 **PROSPECTIVE JUROR:** WHAT WAS THAT?

6 **THE COURT:** IS THAT A YES?

7 **PROSPECTIVE JUROR:** SORRY. YES. THIS COMING MONDAY
8 AND TUESDAY I HAVE AN EVENT -- TWO EVENTS IN THE AFTERNOON.

9 **THE COURT:** WHAT TIME DO THEY START?

10 **PROSPECTIVE JUROR:** THEY START AT FIVE BUT I SHOULD
11 BE THERE BY THREE FOR SETUP.

12 **THE COURT:** OKAY.

13 **PROSPECTIVE JUROR:** IN SAN FRANCISCO AS WELL.

14 **THE COURT:** IN SAN FRANCISCO?

15 **PROSPECTIVE JUROR:** YES.

16 **THE COURT:** OKAY. THAT'S HELPFUL TO KNOW.

17 GIVEN THE TOPICS WE'VE BEEN DISCUSSING, DO YOU THINK THE
18 PARTIES WOULD LIKE TO KNOW ANYTHING ABOUT YOU IN TERMS OF YOUR
19 ABILITY TO BE FAIR AND IMPARTIAL?

20 **PROSPECTIVE JUROR:** NO. I WOULD SAY I'M PRETTY EASY
21 GOING, UNBIASED OPINION HERE.

22 **THE COURT:** IF YOU ARE DOING EVENTS, YOU MUST LIKE TO
23 WORK WITH PEOPLE?

24 **PROSPECTIVE JUROR:** YES, LOVE WORKING WITH PEOPLE AND
25 GROUPS.

1 **THE COURT:** GOOD. ALL RIGHT. THANK YOU.

2 **PROSPECTIVE JUROR:** THANK YOU.

3 **THE COURT:** MR. ROUSSEU?

4 **PROSPECTIVE JUROR:** GOOD MORNING.

5 **THE COURT:** GOOD MORNING. DID I SAY THAT RIGHT?

6 **PROSPECTIVE JUROR:** YEP.

7 **THE COURT:** THANK YOU.

8 SO WHEN DID YOU GET YOUR BUSINESS DEGREE, SIR?

9 **PROSPECTIVE JUROR:** THAT WAS WHILE WORKING, I'D SAY,
10 2002.

11 **THE COURT:** AS A SALES ENGINEER, FOR DIGITAL REALTY,
12 WHAT DOES THAT MEAN?

13 **PROSPECTIVE JUROR:** I SUPPORT OUR SALES ON MAKING
14 SURE IT'S A TECHNICALLY SOUND SOLUTION FOR OUR CUSTOMERS.

15 **THE COURT:** CAN YOU GIVE ME AN EXAMPLE?

16 **PROSPECTIVE JUROR:** DIGITAL REALTY IS A DATA CENTER
17 PROVIDER. SO IN DATA CENTERS, YOU NEED TO PROPERLY ACCOUNT
18 FOR POWER COOLING AND SECURITY FOR -- TO MAKE THEIR
19 ENVIRONMENT SECURE.

20 **THE COURT:** OKAY. SO IT IS NOT A REAL ESTATE
21 COMPANY, IT IS A DATA COMPANY?

22 **PROSPECTIVE JUROR:** IT'S A LITTLE BIT OF BOTH.

23 **THE COURT:** IN WHAT WAY?

24 **PROSPECTIVE JUROR:** THERE'S MASSIVE LAND ACQUISITIONS
25 TO BE HAD. SO IT STARTS OFF AS DIRT AND, AT THE END RESULT,

1 YOU WILL HAVE AN OPERATING DATA CENTER.

2 **THE COURT:** WHAT IS THE NATURE OF THE CLIENTELE? CAN
3 YOU GENERALIZE SO WE HAVE A BETTER SENSE OF THAT?

4 **PROSPECTIVE JUROR:** THINK OF YOUR TOP SOCIAL MEDIA
5 PROVIDERS, TOP SOFTWARE PROVIDERS. SO FACEBOOK, GOOGLE,
6 TWITTER, MICROSOFT ORACLE, AND THE LIKE.

7 **THE COURT:** AND YOU -- SO TAKE ANYONE OF THOSE, YOU
8 SUPPORT THEM AND GIVE -- YOU DO WHAT?

9 **PROSPECTIVE JUROR:** SO WE HAVE TERRITORIES BROKEN UP
10 AND SO I SUPPORT THE WEST. SO WE HAVE ACCOUNTS, BUILDINGS,
11 WHICH ARE TECHNICALLY DATA CENTERS AND SALES REPS THAT I AM
12 RESPONSIBLE FOR.

13 **THE COURT:** WHAT KIND OF DATA ARE THEY MANAGING? ALL
14 KINDS OF DATA OR IS THERE A PARTICULAR --

15 **PROSPECTIVE JUROR:** MORE OR LESS, THEY MAY HAVE LIKE
16 A CERTAIN DATA CENTER REQUIREMENT. IT IS IMPORTANT TO
17 UNDERSTAND WHAT THE REQUIREMENT IS AND BUILD TO THAT, FINDING
18 THE RIGHT LOCATION AND CONNECTIVITY AND POWER REQUIREMENTS.

19 **THE COURT:** I SEE. SO YOU ARE FINDING THEM DATA
20 CENTER PLACES?

21 **PROSPECTIVE JUROR:** IN CERTAIN -- WITH CERTAIN
22 COMPANIES, THEY NEED LIKE A BIG LAND GRAB, OTHERS MAY HAVE A
23 SMALLER APPLICATION AND THROUGHOUT OUR PORTFOLIO WE TRY TO
24 FIND THE RIGHT FIT.

25 **THE COURT:** I SEE. OKAY.

1 ANY CONCERNS ABOUT SERVING?

2 **PROSPECTIVE JUROR:** JUST THAT I'M A SINGLE FATHER AND
3 THE SCHEDULING IN THE MORNING FROM SAN RAMON TO HERE IS
4 CHALLENGING.

5 **THE COURT:** AND HOW DID YOU GET YOUR KIDS TO SCHOOL
6 TODAY?

7 **PROSPECTIVE JUROR:** THIS WAS NOT A DAY THAT FELL ON
8 MY DAY. SO I'LL HAVE WEDNESDAY THROUGH FRIDAY -- OR ACTUALLY
9 WEDNESDAY THROUGH SUNDAY, AND MONDAY MORNING IS MY DAYS. SO
10 THIS IS THE ONE WEEKEND THAT IS NOT A WEEKEND, SO IT DOESN'T
11 FALL ON A MONDAY MORNING FOR ME. IT IS EVERY OTHER MONDAY
12 MORNING.

13 **THE COURT:** DO YOUR KIDS ACTUALLY WHY STAY WITH YOU?

14 **PROSPECTIVE JUROR:** YES.

15 **THE COURT:** SO YOUR EX-WIFE, I TAKE IT YOU GUYS MUST
16 LIVE RELATIVELY CLOSE IF THE KIDS ARE GOING TO THE SAME
17 SCHOOL?

18 **PROSPECTIVE JUROR:** RIGHT.

19 **THE COURT:** IS IT THEORETICALLY POSSIBLE THAT SHE CAN
20 HELP YOU GET THEM TO SCHOOL?

21 **PROSPECTIVE JUROR:** I BELIEVE, CONSIDERING THE
22 TIMELINES YOU ARE TALKING ABOUT, YES.

23 **THE COURT:** GREAT. OKAY. THANK YOU, SIR.

24 MS. VELEZ, GOOD MORNING.

25 **PROSPECTIVE JUROR:** GOOD MORNING.

1 **THE COURT:** SO YOU DO HAVE YOUR JD?

2 **PROSPECTIVE JUROR:** I DO.

3 **THE COURT:** HAVE YOU EVER WORKED AS A LAWYER?

4 **PROSPECTIVE JUROR:** I DID NOT. JUST SOME IN-HOUSE
5 STUFF FOR MY DAD'S COMPANY.

6 **THE COURT:** AND WHAT WAS THAT?

7 **PROSPECTIVE JUROR:** HE WAS DOING HAZARDOUS WASTE.

8 **THE COURT:** OKAY. YOU GOT THROUGH ALL THAT LAW
9 SCHOOL AND THEN DECIDED YOU DIDN'T WANT TO BE A LAWYER?

10 **PROSPECTIVE JUROR:** EXACTLY.

11 **THE COURT:** SO, NOW YOU ARE WORKING IN THE CHILDCARE
12 INDUSTRY, I GUESS; IS THAT RIGHT?

13 **PROSPECTIVE JUROR:** I DO. I WORK FOR A
14 INTERGENERATIONAL MONTESSORI PROGRAM. I'M THE SITE DIRECTOR.

15 **THE COURT:** OKAY. AND IN TERMS OF NEEDING BREAKS,
16 DID YOU SEE THE TIMING THAT I PUT UP? SO WE GO -- WE HAVE
17 15-MINUTE BREAKS AFTER AN HOUR AND A HALF. DOES THAT WORK FOR
18 YOU?

19 **PROSPECTIVE JUROR:** THAT'S FINE.

20 **THE COURT:** THE CHILD CUSTODY CASE THAT YOU WERE --
21 WHERE YOU TESTIFIED, CAN YOU SHARE ANY OF THOSE DETAILS WITH
22 US?

23 **PROSPECTIVE JUROR:** IT WAS A STUDENT AT OUR SCHOOL
24 AND DAD MISREPRESENTED SOMETHING THAT I HAD SAID, SO MOM
25 CALLED ME BACK AS A REBUTTAL WITNESS.

1 **THE COURT:** THAT WAS OBVIOUSLY STATE COURT?

2 **PROSPECTIVE JUROR:** YES.

3 **THE COURT:** AND YOU'VE SERVED ON A JURY IN A CRIMINAL
4 CASE?

5 **PROSPECTIVE JUROR:** YES. IT WAS A CHILD MOLESTATION
6 CASE.

7 **THE COURT:** IT SOUNDS LIKE YOU DIDN'T DELIBERATE.
8 YOU WERE AN ALTERNATE?

9 **PROSPECTIVE JUROR:** I WAS AN ALTERNATE.

10 **THE COURT:** DO YOU HAVE ANY CONCERNS ABOUT SERVING?

11 **PROSPECTIVE JUROR:** NO.

12 **THE COURT:** AND YOU ARE IN THE CAMP OF THERE ARE TOO
13 MANY LAWSUITS?

14 **PROSPECTIVE JUROR:** I AM.

15 **THE COURT:** DO YOU HOLD IT AGAINST THE PLAINTIFFS IN
16 THIS PARTICULAR CASE FOR HAVING BROUGHT A LAWSUIT?

17 **PROSPECTIVE JUROR:** NO.

18 **THE COURT:** YOU CAN BE FAIR TO THEM?

19 **PROSPECTIVE JUROR:** I BELIEVE SO.

20 **THE COURT:** OKAY. THANK YOU.

21 MR. WHITE, GOOD MORNING.

22 **PROSPECTIVE JUROR:** GOOD MORNING, YOUR HONOR.

23 **THE COURT:** SEE, THERE IS AN AEROSPACE ENGINEER. SO,
24 YOU ARE DETAIL-ORIENTED, AREN'T YOU?

25 **PROSPECTIVE JUROR:** YES.

1 **THE COURT:** AND WHAT DO YOU DO FOR INFINERA?

2 **PROSPECTIVE JUROR:** INFINERA.

3 **THE COURT:** INFINERA.

4 **PROSPECTIVE JUROR:** ANOTHER MADE-UP WORD, OF COURSE.
5 YES. I AM NOT IN THE BUSINESS OF AEROSPACE ENGINEERING ANY
6 LONGER. WE ARE A TELECOMMUNICATIONS AND NETWORKING EQUIPMENT
7 MANUFACTURER. AND MY SOMEWHAT CRYPTIC JOB TITLE THERE WOULD
8 BE BEST DESCRIBED AS SALES ENGINEER.

9 **THE COURT:** WHAT DOES A SALES ENGINEER DO?

10 **PROSPECTIVE JUROR:** MY JOB IS TO WORK WITH OUR
11 CUSTOMERS AND POTENTIAL CUSTOMERS TO DESIGN SYSTEMS TO MEET
12 THEIR REQUIREMENTS AND, HOPEFULLY, THAT THEY WOULD PURCHASE.

13 **THE COURT:** OKAY. SO THE -- GIVEN WHAT I'VE SAID
14 ABOUT SCHEDULING, I DON'T THINK WE HAVE AN ISSUE; IS THAT
15 RIGHT?

16 **PROSPECTIVE JUROR:** YEAH. YOU CAN IGNORE MY LENGTHY
17 WORDS THERE.

18 **THE COURT:** THAT'S OKAY. DO YOU HAVE ANY CONCERNS
19 ABOUT SERVING?

20 **PROSPECTIVE JUROR:** NO, I DON'T.

21 **THE COURT:** OKAY. THANK YOU. MR. WHITE.

22 **PROSPECTIVE JUROR:** THANK YOU.

23 **THE COURT:** MR. WILSON? GOOD MORNING.

24 **PROSPECTIVE JUROR:** GOOD MORNING.

25 **THE COURT:** SEE YOU'RE THE TEXAN.

1 **PROSPECTIVE JUROR:** I AM.

2 **THE COURT:** WHERE DID YOU GROW UP?

3 **PROSPECTIVE JUROR:** DALLAS, TEXAS.

4 **THE COURT:** I GREW UP IN SAN ANTONIO.

5 **PROSPECTIVE JUROR:** HOW NICE.

6 **THE COURT:** CAN YOU TELL ME SOMETHING ABOUT YOUR JOB
7 AS A PRODUCT MANAGER?

8 **PROSPECTIVE JUROR:** WELL, I MANAGE OUR PRODUCT.

9 **THE COURT:** WHICH IS WHAT?

10 **PROSPECTIVE JUROR:** IT'S -- WE DO A SPECIALTY BANKING
11 AND PAYMENT SERVICE THAT SERVICES THE DEBT SETTLEMENT
12 INDUSTRY. AND WE ALSO -- WE'RE A BIT OF A CUSTODIAN FOR
13 CONSUMERS THAT ARE SAVING MONEY IN ORDER TO WORK OUT DEBT WITH
14 THEIR CREDITORS.

15 **THE COURT:** IN TERMS OF THIS PARTICULAR AGENCY, HAVE
16 YOU EVER HAD ANY INTERACTIONS WITH THEM?

17 **PROSPECTIVE JUROR:** WE WORK WITH SO MANY. I DIDN'T
18 IDENTIFY THE NAME WHEN I SAW THE CASE.

19 **THE COURT:** OKAY. DO YOU HAVE ANY -- OR HAVE YOU HAD
20 ANY OCCASION TO UNDERSTAND THE TECHNOLOGY THAT IS USED
21 SOMETIMES, THE TELEPHONE PHONE SYSTEMS, DO YOU HAVE ANY KIND
22 OF SPECIAL UNDERSTANDING OR BACKGROUND IN THAT AREA?

23 **PROSPECTIVE JUROR:** I WOULDN'T SAY SPECIAL. I HAVE A
24 GENERAL UNDERSTANDING OF HOW THOSE SYSTEMS WORK.

25 **THE COURT:** WHAT IS YOUR UNDERSTANDING?

1 **PROSPECTIVE JUROR:** THEY USE -- THEY SOMEWHAT NEED TO
2 IDENTIFY OR TRY TO FIGURE OUT WHERE THE DEBTOR -- OR HOW TO
3 CONTACT THE DEBTOR. THE SYSTEMS THAT THEY USE TYPICALLY PULL
4 OR GATHER INFORMATION FROM VARIOUS SOURCES IN ORDER TO FIGURE
5 OUT, OKAY, WHAT IS THE PERSON'S CURRENT TELEPHONE NUMBER,
6 ADDRESS. AND I KNOW IT'S A BIG INDUSTRY, SO THERE ARE SEVERAL
7 VENDORS OF VARYING QUALITY THAT PROVIDE THAT SOFTWARE TO DEBT
8 BUYERS, COLLECTION AGENCIES.

9 **THE COURT:** HAVE YOU EVER HEARD OF THE TERM OF
10 SKIP-TRACING?

11 **PROSPECTIVE JUROR:** YES.

12 **THE COURT:** WHAT IS YOUR UNDERSTANDING OF THAT TERM?

13 **PROSPECTIVE JUROR:** IT HELPS PEOPLE -- WHEN YOU SAY
14 DEBT COLLECTORS, IT IS A BIGGER INDUSTRY. SO THERE ARE DEBT
15 BUYERS AND WITH ORIGINAL ISSUERS. I THINK IT'S TYPICALLY DEBT
16 COLLECTION AGENCIES THAT USE THAT SOFTWARE. THERE IS NO
17 NEGATIVE. IT SEEMS LIKE USE OF THAT SOFTWARE HAS A NEGATIVE
18 CONNOTATION FROM WHAT I'M HEARING. I'VE NEVER HEARD A
19 NEGATIVE CONNOTATION AROUND IT.

20 **THE COURT:** ALL I'M TRYING TO UNDERSTAND IS WHETHER
21 OR NOT, GIVEN YOUR JOB, WHETHER YOU HAVE ANY PARTICULAR
22 UNDERSTANDING OF THESE TERMS SO THAT THE PARTIES KNOW THAT A
23 POTENTIAL JUROR HAS AN UNDERSTANDING.

24 **PROSPECTIVE JUROR:** GENERAL UNDERSTANDING.

25 **THE COURT:** OKAY. NOW, YOU'VE BEEN IN A JURY IN A

1 CRIMINAL CASE IN FEDERAL COURT. REALLY?

2 PROSPECTIVE JUROR: ACTUALLY, IT WAS SAN MATEO COUNTY
3 COURT. I APOLOGIZE.

4 THE COURT: OKAY. SO STATE COURT.

5 PROSPECTIVE JUROR: STATE COURT.

6 THE COURT: I WAS SURPRISED BECAUSE, YOU KNOW, WE
7 HAVE SO FEW TRIALS RELATIVE TO THE COUNTIES, IT IS ALWAYS
8 INTERESTING IF I SEE SOMEONE WHO HAS BEEN IN FEDERAL COURT.

9 PROSPECTIVE JUROR: I CHECKED THE WRONG BOX. I
10 APOLOGIZE.

11 THE COURT: THAT'S OKAY. WAS THERE A VERDICT IN THAT
12 CASE?

13 PROSPECTIVE JUROR: THERE WAS NOT.

14 THE COURT: THE JURY HUNG?

15 PROSPECTIVE JUROR: THE JURY HUNG.

16 THE COURT: WHAT KIND OF A CASE WAS IT?

17 PROSPECTIVE JUROR: IT WAS ASSAULT WITH A DEADLY
18 WEAPON INVOLVING A MINOR.

19 THE COURT: WERE YOU THE FOREPERSON?

20 PROSPECTIVE JUROR: I WAS NOT.

21 THE COURT: AND WHAT WAS THE DEADLY WEAPON?

22 PROSPECTIVE JUROR: HARD TO DESCRIBE BUT CHAIN-LINK
23 FENCES. IN ORDER FOR WIND TO NOT DISTURB THE LAWN BEYOND IT,
24 THERE'S THESE VERY THIN WOODEN SLATS THAT KEEP LEAVES FROM
25 BLOWING THROUGH. I THINK IT'S Balsa WOOD. THAT WAS THE

1 DEADLY WEAPON.

2 **THE COURT:** OKAY. ANY CONCERNS ABOUT SERVING OR
3 BEING FAIR AND IMPARTIAL TO BOTH SIDES?

4 **PROSPECTIVE JUROR:** I'M A BIT SYMPATHETIC TO THE DEBT
5 COLLECTION INDUSTRY, IN THE INTEREST OF FULL DISCLOSURE.

6 **THE COURT:** NOW, THIS IS REALLY A CASE ABOUT
7 TELEPHONE CALLS AND WHETHER TELEPHONE CALLS WERE MADE WITH
8 CONSENT. IS THE PLAINTIFF AT A DISADVANTAGE WITH YOU, GIVEN
9 THE NATURE OF THEIR CASE?

10 **PROSPECTIVE JUROR:** I WOULD HAVE TO SAY NO, THEY ARE
11 NOT AT A DISADVANTAGE.

12 **THE COURT:** ALL RIGHT. GOOD ENOUGH, MR. WILSON.
13 THANK YOU.

14 **PROSPECTIVE JUROR:** THANK YOU.

15 **THE COURT:** GOOD MORNING, MS. WOO.

16 **PROSPECTIVE JUROR:** GOOD MORNING.

17 **THE COURT:** MS. WOO, DO YOU LIVE IN OAKLAND OR
18 ORINDA?

19 **PROSPECTIVE JUROR:** I LIVE IN OAKLAND.

20 **THE COURT:** OAKLAND. OKAY. I COULDN'T QUITE TELL.
21 AND IN TERMS OF YOUR JOB, IS IT -- ARE YOU PROVIDING
22 DIRECT SERVICES OR ARE YOU MORE OF A MANAGER AT THIS POINT?

23 **PROSPECTIVE JUROR:** I'M A MANAGER OF PEOPLE WHO
24 PROVIDE DIRECT SERVICES.

25 **THE COURT:** OKAY. HOW LONG HAVE YOU BEEN IN THE

1 MANAGERIAL POSITION?

2 **PROSPECTIVE JUROR:** THE CURRENT ONE, FOUR YEARS BUT
3 PRIOR TO THAT I HAVE BEEN A MANAGER FOR THE STATE 16 YEARS.

4 **THE COURT:** OKAY. AND YOUR TEAMS HAVE RANGED UP TO A
5 HUNDRED?

6 **PROSPECTIVE JUROR:** UH-HUH.

7 **THE COURT:** THAT IS A YES?

8 **PROSPECTIVE JUROR:** YES.

9 **THE COURT:** CAN YOU TELL US ABOUT YOUR EXPERIENCE OR
10 WHAT YOU KNOW ABOUT YOUR BROTHER'S EXPERIENCE WITH THE DEBT
11 COLLECTOR AND HOW THAT MIGHT IMPACT YOUR ABILITY TO SERVE?

12 **PROSPECTIVE JUROR:** MY BROTHER HAS A BRAIN INJURY AND
13 WAS HAVING PROBLEMS MANAGING HIS FINANCES, SO MY FATHER AND I
14 WERE ASSISTING HIM. AND I DON'T THINK HE FULLY UNDERSTOOD
15 WHAT HE WAS -- HE HAS ALWAYS HAD A HISTORY SINCE HIS HEAD
16 INJURY WITH MONEY MANAGEMENT. I STILL TO THIS DAY HELP HIM
17 WITH THAT. HE HAD TO FILE BANKRUPTCY BECAUSE HE WASN'T ABLE
18 TO KEEP UP WITH HIS CREDIT CARD PAYMENTS.

19 **THE COURT:** DID YOU EVER ENACT -- ENGAGE YOURSELF ON
20 HIS BEHALF WITH THE -- WITH ANY DEBT COLLECTORS?

21 **PROSPECTIVE JUROR:** NOT WITH THE DEBT COLLECTORS, NO.

22 **THE COURT:** DO YOU HARBOR ANY ILL FEELINGS AGAINST
23 THE DEFENDANT, GIVEN -- YOU KNOW, THAT PARTICULAR EVENT?

24 **PROSPECTIVE JUROR:** WELL, I THINK -- YOU KNOW, PEOPLE
25 DIDN'T UNDERSTAND -- I DON'T KNOW IF YOU KNOW MUCH ABOUT

1 PEOPLE WITH HEAD INJURIES, BUT A LOT OF TIMES THEY DON'T KNOW
2 WHO TO ADVOCATE FOR THEMSELVES. THEY THINK THEY ARE OKAY,
3 THEY TRY TO PASS AS THEY'RE OKAY, BUT HE REALLY DIDN'T KNOW
4 HOW TO ADVOCATE FOR HIMSELF AND DIDN'T KNOW ASK FOR HELP IN
5 THIS SITUATION. SO THEY DIDN'T UNDERSTAND THE IMPACT OF HIS
6 COGNITIVE POSSIBILITIES.

7 **THE COURT:** YOU DIDN'T CIRCLE THAT YOU KNEW THE
8 DEFENDANT HERE. CAN YOU BE FAIR TO THE DEFENDANT, DO YOU
9 THINK, IN THIS CASE?

10 **PROSPECTIVE JUROR:** SO IN MY JOB I WORK WITH PEOPLE
11 WITH DISABILITIES WHO ARE UNEMPLOYED AND UNDEREMPLOYMENT
12 EMPLOYED. SO WE OFTEN HAVE TO ADVOCATE FOR THEM BECAUSE THEY
13 AREN'T ABLE TO PAY THEIR BILLS A LOT. SO, YOU KNOW, I'VE
14 SPENT MY WHOLE CAREER BEING AN ADVOCATE, SO....

15 **THE COURT:** SO MY QUESTION IS --

16 **PROSPECTIVE JUROR:** I'M NOT SURE TO ANSWER YOUR
17 QUESTION.

18 **THE COURT:** ALL RIGHT. AND YOUR COMMENTS ABOUT THE
19 LEGAL SYSTEM FOCUSED ON THE CRIMINAL SIDE. ANY PARTICULAR
20 COMMENTS ABOUT THE CIVIL SIDE OF THE LEGAL SYSTEM THAT YOU
21 WOULD LIKE TO SHARE? OR THAT YOU CAN --

22 **PROSPECTIVE JUROR:** I DON'T HAVE REALLY ANY
23 EXPERIENCE WITH THAT.

24 **THE COURT:** OKAY. THANK YOU.

25 IS IT XU OR HOW DO I PRONOUNCE IT?

1 **PROSPECTIVE JUROR:** MY LAST NAME?

2 **THE COURT:** YES.

3 **PROSPECTIVE JUROR:** XU.

4 **THE COURT:** GOOD MORNING.

5 **PROSPECTIVE JUROR:** GOOD MORNING.

6 **THE COURT:** YOU'RE AN ACCOUNTANT FOR WELLS FARGO.

7 WHERE DO YOU COMMUTE FOR PURPOSES OF WORKING WITH WELLS FARGO?

8 **PROSPECTIVE JUROR:** I WORK IN THE CITY IN SAN
9 FRANCISCO.

10 **THE COURT:** OKAY. AND DO YOU JUST WORK GENERALLY AS
11 AN ACCOUNTANT OR IS THERE A PARTICULAR DEPARTMENT?

12 **PROSPECTIVE JUROR:** I WORK FOR THE WHOLESALERS, MAINLY
13 SUPPORT LIKE COMMERCIAL LOANS, BUSINESS LOANS.

14 **THE COURT:** OKAY. SO COMMERCIAL LOANS. AND YOU'VE
15 BEEN ON A JURY BEFORE?

16 **PROSPECTIVE JUROR:** UH-HUH, YES.

17 **THE COURT:** WHICH COUNTY WAS THAT?

18 **PROSPECTIVE JUROR:** ALAMEDA COUNTY.

19 **THE COURT:** ALAMEDA?

20 **PROSPECTIVE JUROR:** YES.

21 **THE COURT:** WHAT WAS THE NATURE OF THE CASE?

22 **PROSPECTIVE JUROR:** IT WAS A CRIMINAL CASE. SEXUAL
23 ASSAULT.

24 **THE COURT:** OKAY. WAS THERE A VERDICT?

25 **PROSPECTIVE JUROR:** YES.

1 **THE COURT:** WHAT WAS THE VERDICT?

2 **PROSPECTIVE JUROR:** VERDICT WAS GUILTY.

3 **THE COURT:** WERE YOU THE FOREPERSON?

4 **PROSPECTIVE JUROR:** NO.

5 **THE COURT:** AND WHEN DID YOU COME TO THE UNITED
6 STATES FROM CHINA?

7 **PROSPECTIVE JUROR:** IN 2002.

8 **THE COURT:** 2002. NOW, YOU DIDN'T ANSWER THE
9 QUESTION ABOUT WHETHER YOU HAVE ANYONE WHO HAS WORKED IN
10 COLLECTIONS OR HAD TO COLLECT DEBT AGAINST A THIRD PARTY.
11 WOULD THE ANSWER TO THAT QUESTION BE YES OR NO?

12 **PROSPECTIVE JUROR:** NO.

13 **THE COURT:** AND THEN IN TERMS OF TIMING, AGAIN, IT
14 LOOKS LIKE YOUR CONFLICTS ARE IN THE END OF MAY, JUNE. SO IS
15 THERE ANY CONCERN WITHIN THE NEXT WEEK AND A HALF?

16 **PROSPECTIVE JUROR:** LIKE, BECAUSE I'M UNDER SOME
17 MEDICAL TREATMENT, THE TREATMENT GOES NEXT THREE MONTHS FROM
18 END OF APRIL TO -- ALL THE WAY TO JULY.

19 **THE COURT:** WHEN IS YOUR NEXT APPOINTMENT?

20 **PROSPECTIVE JUROR:** NEXT WEEK.

21 **THE COURT:** WHEN?

22 **PROSPECTIVE JUROR:** I THINK WEDNESDAY.

23 **THE COURT:** AT WHAT TIME?

24 **PROSPECTIVE JUROR:** 10:30.

25 **THE COURT:** OKAY. GREAT. THANK YOU.

1 OKAY. LADIES AND GENTLEMEN, I'M GOING TO AT THIS POINT
2 ALLOW THE ATTORNEYS TO ASK YOU QUESTIONS. I WANT TO LET YOU
3 KNOW IN ADVANCE THAT THEY ARE ON TIME LIMITS. I GIVE THEM
4 TIME LIMITS. AND BECAUSE OF THAT, IT IS PROBABLY LIKELY THAT
5 ALL OF YOU WON'T GET ASKED QUESTIONS. THEY ARE REALLY GOING
6 TO FOCUS IN ON PEOPLE WHO THEY WANT TO HEAR FROM. SO, I WOULD
7 ASK YOU PLEASE NOT TO HOLD THAT AGAINST THEM. THEY WOULD
8 REALLY LOVE TO KNOW LOTS ABOUT YOU. IF I GAVE THEM THE TIME,
9 THEY WOULD TAKE IT. THEY DON'T HAVE IT, SO YOU CAN HOLD IT
10 AGAINST ME IF YOU HAVE TO HOLD IT AGAINST SOMEONE.

11 BUT I WILL ALLOW THEM SOME TIME TO ASK YOU QUESTIONS AND
12 WE WILL BEGIN WITH YOU, MR. BURSOR.

13 **MR. BURSOR:** THANK YOU, YOUR HONOR.

14 **THE COURT:** YOU'RE WELCOME.

15 **MR. BURSOR:** MAY I START WITH MR. WILSON? CAN WE
16 PASS --

17 **THE COURT:** PASS HIM THE MIC, PLEASE.

18 **MR. BURSOR:** MR. WILSON, I'M SCOTT BURSOR. I
19 INTRODUCED MYSELF A FEW MOMENTS AGO. I JUST WANT TO ASK YOU
20 ABOUT THE SOFTWARE THAT YOU SELL. IT IS SOFTWARE, RIGHT, THAT
21 YOU SELL?

22 **PROSPECTIVE JUROR:** WELL, IT IS -- WE DON'T SELL
23 SOFTWARE PER SE. IT'S A TECHNICAL SOLUTION FOR SPECIALTY
24 BANKING. IN OTHER WORDS, EVERYTHING IS RUN THROUGH SOFTWARE
25 BUT WE ACTUALLY PROVIDE A SERVICE TO THE DEBT SETTLEMENT

1 INDUSTRY. SO THE DEBT SETTLEMENT INDUSTRY, THERE ARE
2 SPECIALTY CONSULTING FIRMS THAT DEAL WITH CONSUMERS IN BAD
3 DEBT SITUATIONS AND LAW FIRMS. WE ACTUALLY HELP SET UP THE
4 BANKING ACCOUNTS THAT CAN BE ADMINISTERED BY LAWYERS OR BY
5 THOSE DEBT SETTLEMENT CONSULTANTS AND THEN ALSO MAKE
6 DISTRIBUTIONS TO ORIGINAL ISSUERS, DEBT BUYERS AND DEBT
7 COLLECTION AGENCIES ONCE A SETTLEMENT HAS BEEN REACHED.

8 **MR. BURSOR:** SO, WOULD A DEBT COLLECTION INDUSTRY --
9 SORRY -- A DEBT COLLECTION COMPANY, WOULD THEY BE A POTENTIAL
10 CUSTOMER FOR YOUR SOLUTION?

11 **PROSPECTIVE JUROR:** WE WOULDN'T HAVE A BILLING
12 RELATIONSHIP WITH A COLLECTION AGENCY. WE DO HAVE SITUATIONS
13 WHERE WE HAVE TO INTEGRATE OUR PAYMENT SOLUTION INTO THEIR
14 ACCOUNTING SYSTEM AND, PRIMARILY, THAT IS BECAUSE EACH
15 SETTLEMENT THAT IS REACHED, IT NEEDS TO BE ACCOUNTED FOR AND
16 RECONCILED ON THE OTHER SIDE, SO THE SITUATION GETS RESOLVED.

17 **MR. BURSOR:** SO YOU SAY YOUR SOLUTION IS NOT
18 SOFTWARE, IT IS SOFTWARE BASED? YOU HAVE TO INTEGRATE THE
19 SOFTWARE WITH THE DEBT COLLECTION AGENCY SOFTWARE?

20 **PROSPECTIVE JUROR:** WELL, IT IS MORE ON THE LAW FIRM
21 SIDES AND THE CRM'S ON THE CONSULTANT SIDES. THERE ARE TOUCH
22 POINTS WITH COLLECTION AGENCIES' ACCOUNTING SOFTWARE. SO
23 THERE ARE INTEGRATION POINTS WITH VARIOUS PARTIES THROUGHOUT
24 THE ECOSYSTEM.

25 **MR. BURSOR:** YOUR ROLE AS THE PRODUCT MANAGER, WOULD

1 YOU INTERACT WITH THE FOLKS AT THE DEBT COLLECTION AGENCY?

2 **PROSPECTIVE JUROR:** YES.

3 **THE COURT:** ON A DAY-TO-DAY BASIS?

4 **PROSPECTIVE JUROR:** FOR THE LARGER COLLECTION
5 AGENCIES, NOT DAY-TO-DAY. SO MY OTHER MANAGERS SORT OF -- WE
6 HAVE AS RELATIONSHIP MANAGEMENT TEAM THAT DOES THE DAY-TO-DAY
7 BUT IF FEATURES ARE REQUESTED, IT BUBBLES UP TO ME AND
8 SOMETIMES I GET ON THE PHONE TO CLARIFY WHAT THE PURPOSE IS.

9 **MR. BURSOR:** SO DO YOU VIEW THE DEBT COLLECTION
10 AGENCIES THAT YOU WORK WITH AS CLIENTS OF YOURS?

11 **PROSPECTIVE JUROR:** AGAIN, WE DON'T HAVE A BILLING
12 RELATIONSHIP WITH THEM, SO I WOULDN'T CALL THEM CLIENTS.

13 **MR. BURSOR:** BUT IF THEY HAVE AN ISSUE WITH YOUR
14 PRODUCT, THEY CALL YOU AND YOU HELP THEM TO WORK THROUGH THE
15 USE OF YOUR PRODUCT.

16 **PROSPECTIVE JUROR:** THAT'S CORRECT.

17 **MR. BURSOR:** ALL RIGHT. AND THANK YOU, MR. WILSON.
18 CAN I TALK TO MR. ROUSSEU? GOOD MORNING, MR. ROUSSEU.

19 **PROSPECTIVE JUROR:** GOOD MORNING.

20 **MR. BURSOR:** YOU WORK WITH DATA.

21 **PROSPECTIVE JUROR:** NOT EXACTLY, NO.

22 **MR. BURSOR:** OKAY. I TRIED TO MAKE NOTES WHEN
23 EVERYONE WAS TALKING AND IT IS REALLY TOUGH BECAUSE THERE IS
24 18 OF YOU, I THINK. BUT YOU WORK AT A DIGITAL REALTY COMPANY
25 AND WHAT EXACTLY IS YOUR JOB?

1 **PROSPECTIVE JUROR:** SO, I'M A SALES ENGINEER THERE
2 AND WE WORK TO ENSURE OUR CUSTOMERS HAVE THE RIGHT SOLUTION,
3 GIVEN THE DIFFERENT DATA CENTER PORTFOLIO THAT WE PROVIDE.
4 SO, WE ARE MORE INFRASTRUCTURE ONLY AND OUR CLIENTS THAT WE
5 SELL TO -- OUR CUSTOMERS, THEY MANAGE THEIR OWN DATA AND
6 APPLICATIONS AND THEIR DEPLOYMENTS FOR THEIR ENVIRONMENT
7 WITHIN OUR DATA CENTERS.

8 **MR. BURSOR:** DO YOU SELL SOFTWARE?

9 **PROSPECTIVE JUROR:** NOT AT ALL.

10 **MR. BURSOR:** DO YOU MANAGE DATA?

11 **PROSPECTIVE JUROR:** OUR CUSTOMERS MANAGE THEIR OWN
12 DATA. WE MANAGE OUR DATA CENTER PORTFOLIO.

13 **MR. BURSOR:** HAVE YOU EVER USED MICROSOFT EXCEL?

14 **PROSPECTIVE JUROR:** SURE.

15 **MR. BURSOR:** ANYBODY ON THE PANEL WHO HAS NEVER USED
16 MICROSOFT EXCEL?

17 (NO RESPONSE.)

18 **MR. BURSOR:** OKAY. HAVE YOU EVER USE A PROGRAM
19 CALLED STATA?

20 **PROSPECTIVE JUROR:** NEVER HEARD OF IT.

21 **MR. BURSOR:** DO YOU HAVE A CELLPHONE?

22 **PROSPECTIVE JUROR:** YES.

23 **MR. BURSOR:** ALL RIGHT. IS THERE ANYONE ON THE PANEL
24 THAT DOES NOT HAVE A CELLPHONE?

25 (NO RESPONSE.)

MR. BURSOR: ALL RIGHT. MR. ROUSSEU, HAVE YOU EVER
RECEIVED A PHONE BILL?

PROSPECTIVE JUROR: YES.

MR. BURSOR: DO YOU REMEMBER WHEN PHONE BILLS USED TO HAVE EACH PHONE CALL YOU MADE ON THE BILL?

PROSPECTIVE JUROR: YES.

MR. BURSAR: YOU'VE RECEIVED BILLS LIKE THAT?

PROSPECTIVE JUROR: IT HAS BEEN QUITE SOME TIME
BECAUSE ALL I HAVE IS A CELLPHONE NOW. BUT, YES.

MR. BURSOR: YOU REMEMBER WHEN PHONE BILLS HAD EVERY
CALL ON THE BILL?

PROSPECTIVE JUROR: YES.

MR. BURSAR: AND IS THERE ANYONE ON THE PANEL THAT
THAT HAS NEVER SEEN A PHONE BILL LIKE THAT?

(NO RESPONSE.)

MR. BURSAR: PROBABLY BECAUSE YOU ARE TOO YOUNG.

PROSPECTIVE JUROR: NO. BECAUSE I JUST MOVED --

MR. BURSOR: OKAY.

MR. WHITE? HI.

PROSPECTIVE JUROR: HI.

MR. BURSOR: GOOD MORNING, MR. WHITE. I'M SCOTT BURSOR.

DO YOU MANAGE DATA IN YOUR JOB?

PROSPECTIVE JUROR: IN MANY WAYS, I'M SIMILAR TO, I
THINK, MR. ROUSSEU, IS IT?

1 **PROSPECTIVE JUROR:** YES.

2 **PROSPECTIVE JUROR:** YES. OUR COMPANY IS,
3 ESSENTIALLY, PROVIDING NETWORKING EQUIPMENT THAT OUR CUSTOMERS
4 CAN PASS THEIR DATA OVER. SO, WE ARE -- IN PROBABLY MORE
5 SIMPLE TERMS, WE'RE SORT OF PROVIDING THE EQUIPMENT THEY NEED
6 TO BUILD THE BIG FAT PIPES AND THEN THEY PUMP WHATEVER THEIR
7 OWN DATA IS ACROSS THOSE. SO WE ARE GIVING THEM THE HARDWARE
8 TO DO THAT AND SOFTWARE THAT ALLOWS THEM TO PROVISION AND
9 CONFIGURE THAT NETWORK, BUT I'M NOT ENCOUNTERING THEIR DATA.
10 IT'S KIND OF AGNOSTIC TO US WHAT THEY ARE PUTTING ACROSS THOSE
11 LINES.

12 **MR. BURSOR:** HAVE YOU EVER MANAGED A LARGE DATABASE
13 OR USED A LARGE DATABASE IN YOUR JOB?

14 **PROSPECTIVE JUROR:** NOTHING -- I MEAN, MICROSOFT
15 ACCESS, SMALL DATABASE, BUT NOTHING OF MAJOR SIGNIFICANCE, I
16 GUESS.

17 **MR. BURSOR:** OKAY. SO YOU'VE USED MICROSOFT ACCESS
18 DATABASE SOFTWARE?

19 **PROSPECTIVE JUROR:** QUITE SOME TIME AGO.

20 **MR. BURSOR:** OKAY. YOU'VE ALSO WORKED WITH EXCEL?

21 **PROSPECTIVE JUROR:** YES.

22 **MR. BURSOR:** ALL RIGHT. YOU'VE SEEN PHONE BILLS THAT
23 HAVE THE PHONE CALLS BROKEN OUT --

24 **PROSPECTIVE JUROR:** JUST TO CLARIFY. WHEN YOU SAY
25 PHONE BILLS, YOU'RE TALKING A LANDLINE, NOT A MOBILE PHONE?

1 **MR. BURSOR:** EITHER WAY.

2 **PROSPECTIVE JUROR:** OKAY. SO, YEAH, I THINK EVEN
3 TODAY MY MOBILE PHONE BILL BREAKS IT OUT THAT WAY.

4 **MR. BURSOR:** OKAY.

5 YOUR HONOR, MAY I JUST HAVE A MOMENT?

6 **THE COURT:** YOU MAY.

7 (PAUSE IN THE PROCEEDINGS.)

8 **MR. BURSOR:** YOUR HONOR, THAT IS ALL I HAVE RIGHT
9 NOW.

10 **THE COURT:** THANK YOU.

11 MR. ELLIS?

12 **MR. ELLIS:** THANK YOU, YOUR HONOR.

13 HI.

14 **PROSPECTIVE JURORS:** HELLO.

15 **MR. ELLIS:** SO, WHEN THE MICROPHONE GETS PASSED
16 AROUND, TYPICALLY, IF IT GOES UP AND DOWN THE ROWS, AS THE
17 MICROPHONE GETS CLOSE TO SOMEBODY, YOU CAN SEE THE PANIC ON
18 THE FACES OF THE NEXT PERSON UP.

19 MS. COOPER, PROBABLY NOT SURPRISING, YOU KNOW, I'M GOING
20 TO ASK YOU A COUPLE OF QUESTIONS.

21 SO, WRITING THAT BOOK, HOW MANY -- THIS IS NOT REALLY A
22 STRICT QUESTION. HOW MANY PAGES IS THAT?

23 **PROSPECTIVE JUROR:** I KNOW. IT IS HAS LIKE SEVEN
24 CHAPTERS OR SOMETHING LIKE THAT.

25 **MR. ELLIS:** IS THAT LIKE AVAILABLE ON AMAZON --

1 **PROSPECTIVE JUROR:** YES.

2 **MR. ELLIS:** -- OR GOOGLE?

3 **PROSPECTIVE JUROR:** YEAH.

4 **MR. ELLIS:** YOU KNOW, THE THING ABOUT VOIR DIRE IS
5 THAT YOU HAVE TWO PARTIES IN THE COURTROOM. YOU'VE GOT THIS
6 TABLE THAT'S GOT A PARTY AND THAT TABLE THAT'S GOT A PARTY,
7 AND WHAT WE ARE TRYING TO FIGURE OUT, AND WHAT THE COURT IS
8 TRYING TO FIGURE OUT IS WHETHER OR NOT YOU'RE THE RIGHT JUROR
9 FOR THIS CASE. OKAY? AND WHAT DOES THAT MEAN? WELL, IT
10 MEANS THAT YOU'RE FAIR TO BOTH SIDES; THAT IS, STARTING OFF
11 WE'RE EVEN-STEVEN.

12 SO, I'M GOING TO COME BACK TO YOU IN A SECOND. BUT THE
13 QUESTION IS THIS: YOU KNOW, THERE IS PROBABLY THE SCALES OF
14 JUSTICE SOMEPLACE IN THIS COURTROOM. AND AT THE BEGINNING OF
15 A TRIAL, WE ATTORNEYS TRY TO FIGURE OUT, OKAY, WHEN WE START
16 OFF IN THIS CASE, ARE THE SCALES EVEN? RIGHT?

17 THEY ARE NOT TILTED A LITTLE ONE WAY OR THE OTHER. AND BY
18 THE WAY, IF IT SOUNDS LIKE I AM MUMBLING, I HAD DENTAL SURGERY
19 A COUPLE WEEKS AGO AND IT IS STILL NOT QUITE RIGHT. IT SOUNDS
20 REALLY FUNNY TO ME. SO, THAT'S WHAT WE ARE TRYING TO FIGURE
21 OUT. EVERYONE -- ARE WE STARTING OFF EVEN? OR BECAUSE OF
22 YOUR LIFE EXPERIENCES, YOU KNOW, THERE'S WHAT WE CALL BIAS. I
23 DON'T MEAN BIAS IN A BAD WAY, BUT BIAS IN THE SENSE THAT,
24 BASED ON YOUR LIFE EXPERIENCES, MY CLIENT WHICH HAS THE OPEN
25 QUOTE, DEBT COLLECTOR, CLOSE QUOTE NAME. FOR SOME PEOPLE THAT

1 JUST CREATES ALL SORTS OF ISSUES.

2 SO NOW LET ME GET BACK TO YOU AND ASK MY QUESTION:
3 HONESTLY, CAN YOU BE FAIR TO MY CLIENT? ARE THEY STARTING OFF
4 EVEN-STEVEN OR ARE THE SCALES OF JUSTICE EQUALLY BALANCED?
5 BECAUSE YOU HAVEN'T HEARD ANY EVIDENCE YET, HAVE YOU?

6 **PROSPECTIVE JUROR:** NO.

7 **MR. ELLIS:** NONE. SO, HERE'S THE QUESTION: CAN YOU
8 BE FAIR?

9 **PROSPECTIVE JUROR:** I ALSO HAPPEN TO BE AN EXPERT ON
10 UNCONSCIOUS BIAS. SO WHILE I BELIEVE THAT I CAN BE IMPARTIAL,
11 MY EXPERT OPINION LOOKING AT SOMEONE LIKE ME IS THAT I'M
12 COMING IN WITH A CERTAIN LENS ON THIS INDUSTRY THAT IS NOT --
13 NOT AS COMPLETELY IMPARTIAL AS SOMEONE ELSE WHO'S NEVER REALLY
14 THOUGHT ABOUT IT OR BEEN EXPOSED TO THOSE ISSUES.

15 **MR. ELLIS:** RIGHT. YOU DON'T KNOW IF RASH CURTIS WAS
16 THE PERSON THAT CALLED ANY OF THE SUBJECTS THAT YOU DEALT
17 WITH.

18 **PROSPECTIVE JUROR:** NO. I HAVE A GENERAL
19 UNDERSTANDING OF THE INDUSTRY --

20 **MR. ELLIS:** RIGHT.

21 **PROSPECTIVE JUROR:** -- AND THE REASONS BEHIND WHY THE
22 INDUSTRY HAS GROWN, WHICH IS A LARGER ECONOMIC EXPLANATION.
23 IN ANY CASE --

24 **MR. ELLIS:** SO YOU THINK YOU ARE GOING TO BRING
25 THAT -- THAT LENS TO ALL THE EVIDENCE AND TO YOUR

1 DELIBERATIONS?

2 **PROSPECTIVE JUROR:** IT WOULD -- BASED ON EVERYTHING I
3 KNOW ABOUT HOW PEOPLE PROCESS INFORMATION, THAT WOULD BE TRUE.

4 **MR. ELLIS:** OKAY. LOOK, I REALLY APPRECIATE -- I
5 MEAN, THIS WHOLE PROCESS, YOU KNOW, DEPENDS ON PEOPLE BEING
6 OPEN AND HONEST. FROM A DEFENSE VIEWPOINT, AND THAT'S PRETTY
7 MUCH WHAT I DO, I DEFEND COLLECTION AGENCIES AND ATTORNEYS,
8 THE TWO THINGS THAT PEOPLE MAKE THE MOST JOKES ABOUT, RIGHT?
9 YOU KNOW, THE THING THAT WE DON'T WANT IS SOMEONE THAT IS ON
10 THE JURY THAT HAS AN AXE TO GRIND BUT DOESN'T TALK ABOUT IT.
11 RIGHT? AND THEN, YOU KNOW, THEY ARE TRYING TO GET BACK AT
12 SOMEBODY OR SOME INDUSTRY OR SOME AGENCY BECAUSE OF THAT.

13 ALL RIGHT? SO LET ME JUST -- YOU'VE BEEN VERY KIND TO LET
14 ME TALK WITH YOU ABOUT THIS.

15 LADIES AND GENTLEMEN, IS THERE ANYONE ELSE THAT CAN RAISE
16 THEIR HAND AND, AFTER LISTENING TO ME, SAY THAT THEY ARE GOING
17 TO HAVE A BIAS GOING INTO THE JURY ROOM? ANYBODY ELSE?

18 (HANDS RAISED.)

19 **MR. ELLIS:** YES, MA'AM. AND I'M -- YOU KNOW WHAT?
20 LET ME GO BACK. MS. WOO?

21 **PROSPECTIVE JUROR:** UH-HUH.

22 **MR. ELLIS:** START WITH YOU. SO GO AHEAD. LET ME
23 HAVE IT.

24 **PROSPECTIVE JUROR:** WELL, I THINK SO MANY TIMES WE
25 KNOW NAMES AND THIS NAME DIDN'T PAY A BILL BUT YOU DON'T KNOW

1 THE CIRCUMSTANCES OF WHY THEY DIDN'T PAY THE BILL AND THE
2 PERSON OF WHO THEY ARE, THAT THEY WANTED TO PAY THE BILL BUT
3 THEY WEREN'T ABLE TO BECAUSE THEY WERE UNEMPLOYED OR ON SOCIAL
4 SECURITY BENEFITS. I CAN GO ON WHY PEOPLE DON'T PAY BILLS.

5 **MR. ELLIS:** NO. I KNOW. SO HOW DOES THAT AFFECT YOU
6 PERSONALLY IN TERMS OF SERVING ON THIS JURY?

7 **PROSPECTIVE JUROR:** I JUST THINK OF A LOT OF
8 CIRCUMSTANCES WHERE PEOPLE HAVE NOT BEEN ABLE TO PAY BILLS AND
9 COLLECTION AGENCIES HAVE GONE AFTER THEM.

10 **MR. ELLIS:** YEAH. SO IS THAT GOING TO -- I HATE
11 LISTENING TO MY OWN VOICE RIGHT NOW. I AM SORRY, LADIES AND
12 GENTLEMEN. BUT IS THAT GOING TO AFFECT YOU AS YOU LISTEN TO
13 THE EVIDENCE, DO YOU THINK, OR WHEN YOU GO BACK INTO THE ROOM
14 AND -- THE JURY ROOM AND HAVE TO BE DELIBERATE? I MEAN,
15 HONESTLY, YES OR NO.

16 **PROSPECTIVE JUROR:** I MEAN, IT COULD. I DON'T KNOW
17 ANY DETAILS OF THE CASE --

18 **MR. ELLIS:** RIGHT.

19 **PROSPECTIVE JUROR:** -- BUT IT COULD BE SIMILAR
20 SITUATIONS. I DON'T KNOW ANY OF THE NAMES OR ANYTHING LIKE
21 THAT, BUT IT COULD BE SIMILAR SITUATIONS THAT I'VE ADVOCATED
22 FOR SOMEBODY.

23 **MR. ELLIS:** AGAIN, YOU UNDERSTAND MY ANALOGY WHEN I
24 USED THE SCALES OF JUSTICE? EVERYONE UNDERSTANDS THAT, RIGHT?
25 I MEAN -- YOU KNOW, WHAT WE WANT IS TO HAVE A LEVEL PLAYING

1 FIELD AND THEN PIECE BY PIECE EVIDENCE IS GOING TO BE PUT ON
2 THE SCALES, ONE SIDE OR THE OTHER. UNDERSTAND?

3 **PROSPECTIVE JUROR:** UH-HUH.

4 **MR. ELLIS:** ALL RIGHT. SO YOU THINK YOU CAN BE FAIR
5 BUT YOU HAVE SOME DOUBTS. IS THAT A FAIR --

6 **PROSPECTIVE JUROR:** I'M JUST NOT SURE, YEAH, WITHOUT
7 KNOWING MORE DETAILS.

8 **MR. ELLIS:** ALL RIGHT. IT'S MR HUIZINGH?

9 **PROSPECTIVE JUROR:** YEAH.

10 **MR. ELLIS:** IF YOU ACTUALLY GET ON THE JURY PANEL,
11 YOU WILL SEE ME BLOW NAMES ALL THROUGH THE TRIAL. I DON'T GET
12 MY KIDS' NAMES RIGHT. ANYWAY, YOU EXPLAINED A LITTLE BIT
13 ABOUT YOUR ISSUES BUT -- SO TALK TO ME.

14 **PROSPECTIVE JUROR:** I THINK FOR ME IT'S -- I'M JUST
15 NOT A BIG FAN OF THE INDUSTRY ITSELF. IT IS NOT REALLY THE
16 PROCESS, IT IS MORE THE BUSINESS MODEL. MAKING MONEY OFF
17 PEOPLE'S DEBT IS KIND OF A WEIRD BUSINESS MODEL IN MY MIND.
18 THAT IS THE ONLY REASON WHY I MENTION THAT.

19 **MR. ELLIS:** BUT IN RAISING YOUR HAND, YOU'RE --
20 BRAVELY BY THE WAY, RATHER THAN JUST SIT THERE SILENTLY.
21 THERE IS ENOUGH CONCERN YOU WANT ME TO KNOW ABOUT IT.

22 **PROSPECTIVE JUROR:** WELL, I MEAN, NOT KNOWING ANY OF
23 THE FACTS OR CIRCUMSTANCES, I WOULD SAY I HAVE SOME BIAS
24 ALREADY, BUT I THINK I'M A FAIR PERSON AND FACTS AND
25 CIRCUMSTANCES DEFINITELY CHANGES THAT.

1 **MR. ELLIS:** OKAY. SO THE QUESTION IS, THIS TRIAL
2 WILL -- WE THINK WILL PRETTY MUCH BE OVER, YOU KNOW, FRIDAY OR
3 MONDAY -- FRIDAY OR HOPEFULLY MONDAY AT THE LATEST. THINGS
4 ALWAYS HAPPEN. BUT SO ARE YOU -- WHAT YOU ARE SAYING RIGHT
5 NOW IS THAT WE ARE STARTING OFF EVEN-STEVEN OR WE'RE REALLY
6 NOT.

7 **PROSPECTIVE JUROR:** PROBABLY NOT. BUT THE FACTS AND
8 CIRCUMSTANCES, THAT IS WHAT I WOULD NEED TO KNOW MORE ABOUT.

9 **MR. ELLIS:** OKAY. YOU UNDERSTAND WHAT MY CONCERN
10 WOULD BE WHEN I HEAR A JURY SAY THAT?

11 **PROSPECTIVE JUROR:** UH-HUH.

12 **MR. ELLIS:** ALL RIGHT. SO LET ME -- I'M ALMOST DONE.
13 SO LET ME MAKE THIS COMMENT. DOES ANYONE DISAGREE THAT IF YOU
14 ENTER INTO A CONTRACT OR, YOU KNOW, YOU INCUR A DEBT, EVEN IF
15 CIRCUMSTANCES ARE BAD, SOMEONE DESERVES TO BE PAID? DOES
16 ANYONE DISAGREE WITH THAT? I MEAN, IF YOU DO, RAISE YOUR
17 HAND. BECAUSE, YOU KNOW, THE FACT IS DEBT COLLECTORS,
18 ATTORNEYS, THE PARTS OF OUR SOCIETY THAT PEOPLE MAKE THE JOKES
19 ABOUT YOU KNOW HOW MANY AT THE BOTTOM OF AN OCEAN, GOOD START,
20 BLAH, BLAH, BLAH.

21 THE FACT IS -- DOES ANYONE HERE -- IF YOU DO, I WOULD LIKE
22 TO KNOW. DOES ANYONE DISAGREE THAT DEBT COLLECTION IS A PART
23 OF SOCIETY THAT DOES A SERVICE TO MAKE SURE THAT, YOU KNOW,
24 PEOPLE GET PAID? DOES ANYONE DISAGREE WITH THAT?

25 **MR. ELLIS:** OKAY.

1 **PROSPECTIVE JUROR:** IT FEELS -- I MAY BE ENTERING
2 PHILOSOPHICAL AREA HERE BUT I THINK THE QUESTION IS A
3 MISREPRESENTATION -- I THINK THE QUESTION KIND OF PROVIDES A
4 PRETTY NARROW LENS ON WHAT IS ACTUALLY HAPPENING. SO, DO I
5 THINK WHEN PEOPLE GET IN CAR ACCIDENTS AND COME OUT OF THE
6 HOSPITAL \$150,000 IN DEBT, THAT SOMEONE SHOULD BE PAID FOR
7 THAT? THERE IS LOT OF DIFFERENT LENSES TO LOOK THROUGH THAT.
8 OF COURSE, THE DOCTORS, NURSES, ALL THOSE PEOPLE SHOULD GET
9 PAID. THE QUESTION IS WHO SHOULD PAY AND WHO SHOULD PAY THE
10 CONSEQUENCES OF THAT DEBT. SO, IN GENERAL, I THINK PEOPLE
11 SHOULD BE PAID FOR THE SERVICES THAT THEY PROVIDE. WHO IS
12 RESPONSIBLE FOR PAYING IS A DIFFERENT QUESTION. DEPENDING ON
13 THE SITUATION WE ARE BRINGING UP, IT HAS A LOT OF MORAL
14 IMPLICATIONS ABOUT WHETHER OR NOT WE THINK PEOPLE SHOULD HAVE
15 HEALTHCARE. SO I'M GOING TO PUSH BACK ON THE NARROWNESS ON
16 THE QUESTION.

17 **MR. ELLIS:** I APPRECIATE THAT AND, YOU KNOW,
18 MS. COOPER, I THINK YOU'RE RIGHT. I DON'T DISAGREE WITH THAT.
19 I GUESS THIS IS NOT THE TIME FOR A PHILOSOPHICAL DEBATE
20 NECESSARILY, BUT THERE ARE ALSO JOE'S LAWN CARE THAT DOESN'T
21 GET PAID. THERE ARE LOTS OF SMALL BUSINESSES THAT DON'T GET
22 PAID. WE ARE NOT TALKING ABOUT HUGE INSTITUTIONS. WE ARE
23 TALKING ABOUT PEOPLE -- YOU KNOW, THE PIZZA STORE THAT DOESN'T
24 GET PAID. THOSE ARE ALL PEOPLE THAT HAVE TO MAKE PAYROLLS AND
25 HAVE PAYCHECKS AND THEIR LIGHTS ARE ON. YOU AGREE WITH THAT,

1 TOO, I TAKE IT?

2 PROSPECTIVE JUROR: YES.

3 MR. ELLIS: ALL RIGHT. SO LET ME JUST KIND OF WRAP
4 THIS UP AND GO TO ONE OTHER AREA. SO, LADIES AND GENTLEMEN,
5 BECAUSE I'M THE DEFENSE, I ALWAYS GO SECOND AND THE COURT TO
6 ALLUDED TO THIS. BUT HERE IS THE DEAL. YOU ARE GOING TO HEAR
7 FROM PLAINTIFFS FIRST EVERY SINGLE TIME. OPENING STATEMENTS,
8 MR. BURSOR GETS TO GO FIRST. WITH EVIDENCE, MR. BURSOR GETS
9 TO GO FIRST.

10 IS THERE ANYONE HERE THAT CAN'T WAIT UNTIL I PUT ON MY
11 EVIDENCE OR I DO MY CROSS-EXAMINATION? IS THERE ANYONE THAT
12 CAN'T DO THAT FOR ME? ANYBODY? MS. RAFELLO, CAN YOU DO THAT
13 FOR ME?

14 PROSPECTIVE JUROR: YES.

15 MR. ELLIS: OKAY. BECAUSE I CAN TELL YOU HAVING
16 TRIED A FEW CASES, IF YOU GO WITH THE FIRST THING YOU HEAR, IT
17 IS GOING TO CHANGE AT SOME POINT LATER. IT MAY NOT CHANGE
18 YOUR MIND ULTIMATELY, BUT IT IS GOING TO CHANGE YOUR VIEW OF
19 WHAT HAPPENED. OKAY? SO ALL OF YOU ALL CAN DO THAT FOR ME?

20 ALL RIGHT. IS THERE ANYONE SITTING IN HERE THAT IS BRAVE
21 ENOUGH WITHOUT ME ASKING A SPECIFIC QUESTION TO SAY, YOU KNOW,
22 I'M NOT SURE I'M THE RIGHT PERSON FOR THIS CASE, MAYBE THE
23 NORTHERN DISTRICT OF CALIFORNIA, ALAMEDA, OAKLAND BRANCH CAN
24 FIND ANOTHER CASE FOR ME. I DON'T WANT TO BE ON THIS CASE.
25 IS THERE ANYONE HERE THAT FEELS THAT WAY?

1 (NO RESPONSE.)

2 **MR. ELLIS:** OKAY. I'M GOING TO SIT DOWN NOW. BUT I
3 AM ACTUALLY GOING TO REACH OUT. MS. GUIDI, I HAVE BEEN
4 WATCHING YOU SITTING DOWN HERE AND I FEEL SOME AMBIVALENCE
5 FROM YOU. I DON'T THINK IT IS THE PROCESS BUT HOW ARE YOU
6 FEELING ABOUT -- NOT LAWSUITS IN GENERAL BUT ABOUT MY CLIENT?

7 **PROSPECTIVE JUROR:** I FEEL THAT I HAVE TO BE
8 OPEN-MINDED AND NOT TAKE MY OWN PERSONAL EXPERIENCE AND PUT IT
9 ON THE CASE AND THAT I NEED TO THINK OF THEM BOTH
10 INDEPENDENTLY AND NOT BE BIASED ABOUT IT --

11 **MR. ELLIS:** CORRECT.

12 **PROSPECTIVE JUROR:** -- AND JUST TAKE THE SITUATION
13 FOR WHAT IT IS AND EVALUATE IT IN THAT SENSE.

14 **MR. ELLIS:** WELL, THAT IS WHAT I LOVE TO HERE. IS
15 THAT GRUDGING? I MEAN, ARE YOU GOING TO BE FIGHTING YOUR OWN
16 FEELINGS EVERY STEP OF THE WAY?

17 **PROSPECTIVE JUROR:** I DON'T BELIEVE SO, BECAUSE I'M A
18 PRETTY STRONG FORCE WHERE THAT IS CONCERNED.

19 **MR. ELLIS:** OKAY.

20 **PROSPECTIVE JUROR:** WITH RAISING KIDS AND EVERYTHING
21 ELSE, THAT IS -- PRACTICE WHAT YOU PREACH AND THAT'S WHAT I
22 FOCUS ON.

23 **MR. ELLIS:** WELL, IF YOU HAVE HAD TO DEAL WITH TWO
24 KIDS AND TRIED TO JUDGE CREDIBILITY THE WAY I HAVE DONE WITH
25 MINE, I UNDERSTAND.

1 **PROSPECTIVE JUROR:** YOU HAVE TO BE VERY OPEN-MINDED.

2 **MR. ELLIS:** YOU'RE BRINGING SOME REAL WAR EXPERIENCE
3 HERE. THANK YOU, FOLKS, VERY MUCH.

4 **THE COURT:** THANK YOU, MR. ELLIS. LADIES AND
5 GENTLEMEN, WE ARE GOING TO TAKE A BREAK. I NEED TO SPEAK WITH
6 THE LAWYERS AND I HAVE A SERIES OF LITTLE "DO NOT" SLIDES FOR
7 YOU, WHICH WE ARE GOING TO GO THROUGH HERE. BUT WHAT IS GOING
8 TO HAPPEN IS, AS SOON AS I GIVE YOU YOUR "DO NOT"
9 ADMONISHMENTS, I WILL HAVE YOU LEAVE THE COURTROOM. YOU CAN
10 GO IF YOU HAVE TIME -- IF YOU THINK YOU HAVE TIME AND CAN GET
11 BACK THROUGH SECURITY, YOU CAN GO GRAB A QUICK CUP OF COFFEE
12 OR SOMETHING IF YOU WANT BUT I WOULD LIKE YOU BACK HERE AT
13 11:30. IT IS GOING TO BE 11. I NEED TO SPEAK WITH THE
14 LAWYERS. AND WHAT I WILL HAVE YOU DO IS -- THOSE OF YOU WHO
15 ARE UP HERE, YOU WON'T BE COME BACK TO THESE SEATS. YOU WILL
16 STAY IN THE AUDIENCE. OKAY?

17 SO WE ARE IN THE MIDDLE OF VOIR DIRE, WHICH MEANS THAT, AS
18 YOU KNOW, AS YOU SAW, WE ARE TRYING TO GET YOUR OPINIONS AND
19 WE ARE ENTITLED TO YOUR OPINION NOT INFLUENCED BY ANYTHING
20 ELSE. SO WHEN YOU LEAVE THIS COURTROOM, IT IS IMPORTANT THAT
21 YOU DO NOT DISCUSS YOUR OPINIONS WITH ANYONE ELSE.

22 WHICH SLIDES DO WE HAVE HERE, FRANCES? ALL RIGHT. YES,
23 WE WANT TO KNOW YOUR OPINION AND ONLY YOUR OPINION, NO ONE
24 ELSE'S. WHAT'S NEXT? NO CELLPHONES, NO TALKING, NO
25 ELECTRONIC MEDIA. THAT MEANS NO TWITTER, NO INSTAGRAM, NO

1 DOING ANY RESEARCH, NO TALKING ABOUT -- WITH ANYONE WHAT WE
2 ARE DOING IN HERE. YOU HAVE ALL BEEN SWORN. SO I CANNOT AND
3 DO NOT WANT YOU TO DO ANYTHING WITH RESPECT TO THIS CASE.

4 I DO NOT WANT YOU TO TALK TO ANY OF THE OTHER JURORS, THE
5 ATTORNEYS, THE WITNESSES, THE SPECTATORS, FAMILY, YOUR
6 FRIENDS, YOUR EMPLOYERS. IF YOU ARE SEATED AS A JURORS, I
7 WILL TELL YOU WHAT YOU CAN AND CANNOT SAY. YOU CANNOT NOT DO
8 ANY RESEARCH, ANY INVESTIGATION ON THIS TOPIC OR ANY OF THE
9 TOPICS WE HAVE BEEN DISCUSSING. YOU ARE ORDERED, IF YOU START
10 LISTENING TO THE NEWS -- I DON'T KNOW THAT THIS IS GETTING
11 PICKED UP. SOMETIMES IT DOES, SOMETIMES IT DOESN'T. BUT IF
12 YOU HAPPEN TO HEAR ANYTHING, YOU CANNOT LISTEN TO IT, SO JUST
13 TURN THAT OFF.

14 AND WHILE YOU ARE OUT, GO AHEAD, CHECK YOUR EMAIL, DO
15 SOMETHING THAT'S PERSONAL TO YOU. DO NOT DO ANYTHING RELATIVE
16 TO THIS CASE. DO NOT TALK TO EACH OTHER ABOUT WHAT WE ARE
17 TALKING ABOUT. WE NEED -- IF WE HAVE FOLLOW-UP QUESTIONS, I
18 NEED TO KNOW YOUR OPINION, NOT YOUR OPINION INFLUENCED BY ANY
19 OTHER DISCUSSION.

20 THE LAWYERS HAVE BEEN INSTRUCTED NOT TO COMMUNICATE WITH
21 YOU IN ANY WAY, SHAPE OR FORM. IF YOU ACCIDENTALLY HAPPEN TO
22 ENCOUNTER THEM ON A BREAK, PLEASE JUST IGNORE THEM. THEY WILL
23 NOT THINK YOU'RE RUDE. THEY WILL BE FOLLOWING MY ORDER NOT TO
24 ENGAGE WITH YOU.

25 WE DO THIS BECAUSE WE WANT TO MAKE SURE THAT EVERYONE GETS

1 A FAIR TRIAL AND I WANT TO MAKE SURE THAT YOU ARE NOT DOING
2 ANYTHING INAPPROPRIATE. IF YOU DO ANY OF THAT STUFF THAT I
3 HAVE SAID NOT TO, THAT COULD BE VIEWED AS INAPPROPRIATE.

4 OKAY. SO WE WILL SEE YOU BACK HERE AT 11:30. PLEASE WAIT
5 OUTSIDE THE COURTROOM AND WE WILL LET YOU IN WHEN IT'S AN
6 APPROPRIATE TIME.

7 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE PROSPECTIVE
8 JURORS.)

9 **THE COURT:** OKAY. THE RECORD WILL REFLECT THE JURY
10 POOL HAS LEFT THE COURTROOM.

11 I'M GOING TO GIVE YOU A FEW MINUTES TO LOOK AT YOUR NOTES.
12 I WILL TAKE YOUR CHALLENGES FOR CAUSE, AND THEN WE WILL DO
13 PEREMPTORIES. IF YOU WANT TO RUN TO THE BATHROOM, YOU'RE
14 WELCOME TO DO THAT. I WILL BE BACK HERE IN ABOUT FIVE
15 MINUTES.

16 (RECESS TAKEN AT 11:03 A.M.; RESUMED AT 11:11 A.M.)

17 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

18 **THE CLERK:** REMAIN SEATED. THE COURT IS IN SESSION.
19 I DON'T KNOW IF WE HAVE EVERYBODY BACK.

20 **THE COURT:** BACK ON THE RECORD. AND WE WILL START
21 WITH PEREMPTORIES -- CHALLENGES FOR CAUSE. I AM SORRY. ANY
22 FROM THE PLAINTIFF?

23 **MR. BURSOR:** YES, YOUR HONOR.

24 **THE COURT:** JUST GIVE ME THE LIST FIRST.

25 **MR. BURSOR:** MR. WILSON AND -- ONE MOMENT, YOUR

1 HONOR. MR. WILSON AND MR. GOEL.

2 **THE COURT:** ANY FROM THE DEFENSE?

3 **MR. ELLIS:** YES, YOUR HONOR. MS. COOPER, MS. WOO --

4 **THE COURT:** HOLD ON.

5 **MR. ELLIS:** I'M SORRY.

6 **THE COURT:** OKAY.

7 **MR. ELLIS:** AND MR. HUIZINGH. H-U-I-Z-I-N-G-H.

8 **THE CLERK:** ARE YOU --

9 **THE COURT:** WHAT IS THE ARGUMENT WITH RESPECT TO
10 MR. GOEL? WHAT IS YOUR CLAIM FOR CAUSE?

11 **MR. BURSOR:** YOUR HONOR, MR. GOEL -- THIS IS THE
12 DEFENSE LAWYER.

13 **THE COURT:** YES. WHAT IS YOUR CLAIM FOR CAUSE?

14 **MR. BURSOR:** HE APPEARED TO BE SYMPATHETIC WITH THE
15 DEFENSE. HE THINKS THERE'S TOO MANY LAWSUITS, THAT JUDGMENTS
16 AGAINST HIS CLIENTS HAVE BEEN TOO HIGH.

17 **THE COURT:** THAT'S DENIED. YOU CAN MAKE YOUR RECORD
18 ON THESE THINGS LATER. I WANT TO MAKE SURE WE ARE MOVING
19 ALONG.

20 THE COURT IS GOING -- UNLESS YOU WANT TO ARGUE, THE COURT
21 IS INCLINED TO GRANT WITH RESPECT TO WILSON AND COOPER AND
22 WITH RESPECT TO WOO. I THINK MR. HUIZINGH, HE'S TRYING TO GET
23 OUT OF JURY SERVICE. THAT WAS ALL POST -- SO I WILL NOT GRANT
24 WITH RESPECT TO HIM.

25 **MR. ELLIS:** THANK YOU, YOUR HONOR.

1 **THE COURT:** AND LIKE I SAID, IF YOU WANT TO MAKE A
2 RECORD AFTERWARDS, YOU CAN.

3 ALL RIGHT. AT THIS POINT SINCE YOU ARE GOING TO BE
4 EXERCISING PEREMPTORIES, IF YOU WANT TO BE SIT AT COUNSEL
5 TABLE, THAT IS FINE WITH ME.

6 **THE CLERK:** OKAY --

7 **THE COURT:** WE ARE GOING TO TURN OFF YOUR MICS SO
8 THAT YOU CAN TALK TO EACH OTHER. JUST SPEAK UP.

9 **MR. ELLIS:** THANK YOU, YOUR HONOR.

10 **MR. BURSOR:** YOUR HONOR, MAY I ASK ONE QUESTION
11 BEFORE WE DO THAT?

12 **THE COURT:** YES.

13 **MR. BURSOR:** IF WE PASS AND THEY PASS, YOU SEAT THE
14 JURY?

15 **THE COURT:** CORRECT.

16 **MR. BURSOR:** IF WE PASS AND THEY EXERCISE ONE, WE --

17 **THE COURT:** YOU'VE NOT WAIVED YOUR RIGHT.

18 **MR. BURSOR:** OKAY. THANK YOU.

19 **THE COURT:** SO, CURRENTLY, THE JURY IS VELEZ, WHITE,
20 NICHOLAS, ONG, GHASEMIGO HAR, JEW, GUIDI AND RAFELLO. ALTHOUGH
21 LET ME JUST SAY, ON -- I AM INCLINED ON GHASEMIGO HAR, WHICH IS
22 THE MUCH LONGER ONE -- SHE HAS GOT A THREE-YEAR OLD AND
23 DOESN'T SEEM TO HAVE ANY SUPPORT SYSTEM, ANY PRESCHOOL,
24 ANYTHING TO GET HER HERE. I AM INCLINED TO GRANT A HARDSHIP
25 ON HER.

1 DOES ANYBODY HAVE AN OBJECTION TO THAT?

2 **MR. ELLIS:** NOT FROM DEFENSE, YOUR HONOR.

3 **MR. BURSOR:** NO OBJECTION.

4 **THE COURT:** ALL RIGHT. SO SHE'S EXCUSED FOR
5 HARDSHIP, WHICH THEN WOULD PUT COOPER INTO THE GROUP OF
6 EIGHT -- NO, COOPER IS OUT.

7 **MR. BURSOR:** I THINK YOU GRANTED....

8 **THE COURT:** PUTS CAMP INTO THE GROUP OF EIGHT.
9 OKAY. FIRST PEREMPTORY FROM PLAINTIFF.

10 **MR. BURSOR:** PASS.

11 **THE COURT:** PLAINTIFF PASSES.
12 FROM DEFENSE?

13 **MR. ELLIS:** MS. RAFELLO.

14 **THE COURT:** RAFELLO?

15 **MR. ELLIS:** YES, YOUR HONOR. R-A-F-E-L-L-O. IT'S
16 JUROR NO. 8.

17 **THE COURT:** OKAY. MS. RAFELLO IS EXCUSED, THAT
18 BRINGS ONTO THE PANEL XU, X-U.

19 FROM THE PLAINTIFF?

20 **MR. BURSOR:** MR. CAMP.

21 **THE COURT:** MR. CAMP IS EXCUSED.
22 FROM THE DEFENSE?

23 **MR. ELLIS:** THANK YOU, YOUR HONOR. MR. --

24 **THE COURT:** LET ME JUST SAY. NOW, WE HAVE -- RIGHT.
25 SO, HUIZINGH.

1 **MR. ELLIS:** HE JUST GOT ON AND WE ARE EXCUSING HIM,
2 YOUR HONOR.

3 **THE COURT:** OKAY. SO HE IS EXCUSED, WHICH BRINGS ON
4 ROUSSEU.

5 FROM THE PLAINTIFF?

6 **MR. BURSOR:** ONE MOMENT, YOUR HONOR.

7 (PAUSE IN THE PROCEEDINGS.)

8 **MR. BURSOR:** PLAINTIFF PASSES.

9 **THE CLERK:** I'M SORRY?

10 **THE COURT:** PLAINTIFF PASSES.

11 **THE CLERK:** OKAY. THANKS.

12 **THE COURT:** FROM THE DEFENSE?

13 **MR. ELLIS:** YOUR HONOR, DEFENSE WOULD EXCUSE MS. ONG,
14 O-N-G. THAT IS JUROR NO. 4.

15 **THE COURT:** YES. SO MS. ONG IS EXCUSED, WHICH BRINGS
16 ON MR. HINDERLIE.

17 FROM THE PLAINTIFFS?

18 **MR. BURSOR:** PASS.

19 **THE COURT:** PLAINTIFF PASSES.

20 NOW, THIS IS THE LAST PEREMPTORY THAT THE DEFENSE HAS, SO
21 LET ME JUST GO OVER AGAIN WHO WE HAVE.

22 WE HAVE VELEZ, WHITE, NICHOLAS, JEW, GUIDI, RAFELLO.

23 **MR. ELLIS:** I THINK RAFELLO IS OUT, YOUR HONOR.

24 **THE CLERK:** YES.

25 **MR. ELLIS:** THAT WAS MY FIRST PEREMPTORY.

1 **THE COURT:** OH, I AM SORRY. THANK YOU.

2 SO THEN THAT WOULD BE XU IS THE NEXT ONE, ROUSSEU AND
3 HINDERLIE. EVERYBODY ON THE SAME PAGE?

4 **MR. ELLIS:** YES, MA'AM.

5 **THE COURT:** YES?

6 **MR. BURSOR:** YES.

7 **THE COURT:** MR. ELLIS?

8 **MR. ELLIS:** YES, YOUR HONOR.

9 **THE COURT:** DO YOU WISH TO EXERCISE YOUR LAST?

10 **MR. ELLIS:** I DO. WE ARE GOING TO THANK AND EXCUSE
11 MS. GUIDI, JUROR 7.

12 **THE COURT:** ALL RIGHT. THE DEFENSE HAS NO MORE
13 PEREMPTORIES.

14 THE NEXT ONE IS GOEL AND AFTER THAT IS BLEM.
15 PLAINTIFFS?

16 **MR. BURSOR:** GOEL. EXCUSE GOEL, PLEASE.

17 **THE COURT:** OKAY. SO THAT PUTS BLEM AS THE NEXT ONE
18 ON AND DEFENSE HAS NO MORE PEREMPTORIES.

19 DO YOU WISH TO EXERCISE ANOTHER PEREMPTORY?

20 **MR. BURSOR:** NO, YOUR HONOR.

21 **THE COURT:** OKAY. WE HAVE OUR JURY. DOES ANYBODY
22 WISH TO PUT ANYTHING ON THE RECORD WITH RESPECT TO THE
23 FOR-CAUSE CHALLENGES?

24 **MR. BURSOR:** NOT FROM PLAINTIFFS, YOUR HONOR.

25 **MR. ELLIS:** NOT FROM DEFENSE.

1 **THE COURT:** AND WE'LL STAND IN RECESS FOR FIVE
2 MINUTES AND THEN WE WILL START CALLING THEM IN.

3 **MR. BURSOR:** MAY I ASK YOUR HONOR, ARE WE GOING TO
4 COME BACK INTO SESSION AND THEN --

5 **THE COURT:** SO THIS IS WHAT WE ARE GOING TO DO. I
6 WILL CALL THEM UP, I WILL BRING THE EIGHT UP.

7 AND GIVEN THAT WE HAVE ALREADY JUST TAKEN A BREAK, MY PLAN
8 WOULD BE TO THANK AND EXCUSE THE BALANCE OF THE PANEL. I WILL
9 THEN INSTRUCT THE EIGHT JURORS, AND WE WILL START OPENING
10 STATEMENTS IMMEDIATELY AFTER -- AS SOON AS THEY GET BACK IN.

11 **MR. BURSOR:** YOU'RE GOING TO DO THE PRE-EVIDENCE
12 INSTRUCTIONS AND THEN OPENING STATEMENTS?

13 **THE COURT:** CORRECT.

14 **MR. BURSOR:** GOT IT. THANK YOU.

15 **THE COURT:** ALL RIGHT.

16 DO WE HAVE THE BINDERS? CAN WE PUT THE BINDERS ON THE --

17 **THE CLERK:** YES.

18 **THE COURT:** -- ON THE CHAIRS?

19 **MR. BURSOR:** MAY I OPEN THE COMPUTER BACK UP JUST TO
20 MAKE SURE IT IS WORKING?

21 **THE COURT:** SURE.

22 **MR. BURSOR:** THIS IS WORKING. OKAY.

23 **THE CLERK:** FOUR IN THE FRONT --

24 **MR. BURSOR:** I AM SORRY FOR HAVING SO MANY QUESTIONS,
25 YOUR HONOR, BUT WILL WE BE GIVEN A COPY OF THE SAME BINDER

1 THAT THE JURORS ARE GETTING?

2 **THE COURT:** NO. BUT YOU CAN LOOK AT IT. THERE IS
3 NOTHING IN IT OTHER THAN PAPER. IT LOOKS PRETTY. YOU'RE
4 WELCOME TO LOOK AT IT.

5 WHY DON'T YOU GRAB A COPY AND LET THEM LOOK AT IT?

6 **MR. BURSOR:** THANK YOU.

7 **MR. ELLIS:** YOUR HONOR, DOES THE COURT WANT THE JURY
8 QUESTIONNAIRES BACK? THE ONES -- I AM SORRY.

9 **THE COURT:** NO, I AM -- I DON'T SEE ANY REASON FOR
10 YOU TO KEEP THEM. IF YOU NEED TO KEEP THEM FOR APPELLATE
11 PURPOSES, LET ME KNOW. BUT, OTHERWISE, IT'S PROBABLY BEST TO
12 GIVE THEM BACK.

13 **THE CLERK:** ACTUALLY, THEY ARE SUPPOSED TO BE -- THE
14 QUESTIONNAIRES ARE SUPPOSED TO BE RETURNED TO ME.

15 **THE COURT:** OKAY.

16 **MR. BURSOR:** YOUR HONOR, THE ONLY THING OF SUBSTANCE
17 IN HERE IS THE STIPULATED FACTS.

18 **THE COURT:** CORRECT.

19 **MR. BURSOR:** AND I INTENDED TO MAKE REFERENCE TO THEM
20 DURING OPENING STATEMENT. THAT'S NOT GOING TO COME AS A
21 SURPRISE, RIGHT?

22 **THE COURT:** NO. YOU TOLD US YOU WERE WHICH IS WHY WE
23 GAVE YOU A COPY OF THEM. AND I DON'T KNOW EXACTLY WHERE --
24 WHERE DID YOU PUT THEM?

25 **LAW CLERK:** THEY ARE BEHIND THE SCHEDULE.

1 **THE COURT:** I SEE.

2 (QUESTIONNAIRES RETURNED TO THE CLERK.)

3 **THE CLERK:** THANK YOU.

4 **MR. BURSOR:** YOUR HONOR, I DON'T HAVE A CLICKER FOR
5 THIS COMPUTER AND SO I INTEND TO JUST PUSH A BUTTON ON THE
6 COMPUTER. MAY I SPEAK FROM HERE IF AND WHEN I NEED TO DO
7 THAT?

8 **THE COURT:** YES.

9 (PAUSE IN THE PROCEEDINGS.)

10 (PROCEEDINGS HELD IN THE PRESENCE OF THE PROSPECTIVE
11 JURORS.)

12 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD. THE
13 RECORD WILL REFLECT THE PARTIES ARE PRESENT AND THE JURY PANEL
14 IS PRESENT.

15 IF I COULD HAVE THE FOLLOWING JURORS PLEASE COME BACK UP
16 HERE. MS. VELEZ. MS. VELEZ, IF YOU WILL COME TAKE THE FIRST
17 CHAIR CLOSEST TO ME, PLEASE. MR. WHITE? YOU WILL SIT RIGHT
18 NEXT TO HER, MR. WHITE.

19 MR. NICHOLAS, YOU MAY WANT TO GO THE OTHER WAY. THAT'S
20 OKAY IF YOU ARE GOING TO WAIT FOR HIM. PERFECT. THANK YOU.
21 GO IN THAT WAY.

22 AND MS. JEW, MS. XU. MS. XU, I'M GOING TO HAVE YOU TAKE
23 THE FIRST SEAT IN THE BACK ROW, PLEASE.

24 MR. ROUSSEU, MR. HINDERLIE, AND MR. BLEM.

25 OKAY. IF THE EIGHT OF YOU WILL PLEASE STAND TO BE SWORN.

(JURORS SWORN.)

THE CLERK: ALL RIGHT. YOU MAY BE SEATED.

THE COURT: ALL RIGHT. SO FOR THE REST OF THE JURORS
IN THE COURTROOM, THANK YOU FOR YOUR SERVICE. YOU ARE
EXCUSED. WE HAVE OUR JURY. HAVE A WONDERFUL DAY AND THANK
YOU FOR COMING IN.

(PROSPECTIVE JURORS EXIT THE COURTROOM.)

THE COURT: OKAY. LADIES AND GENTLEMEN, WELCOME. WE
ARE GETTING STARTED RIGHT AWAY. NO TIME TO WASTE, RIGHT? NO
TIME BETTER THAN THE PRESENT.

I HAVE A NUMBER OF INSTRUCTIONS FOR YOU, WHICH I'M GOING
TO GIVE YOU. YOU HAVE ON YOUR SEAT A JURY BINDER. LET'S JUST
TALK BRIEFLY ABOUT WHAT IS IN THAT BINDER.

FIRST OF ALL, THERE IS A DAILY REMINDER. EVERY TIME YOU
OPEN IT UP ABOUT SOME INSTRUCTIONS I'M GOING TO GIVE YOU AND
THAT INCLUDES MANY OF THOSE "DO NOTS" THAT I WAS TALKING ABOUT
BEFORE. THERE IS PAPER. THERE IS A CALENDAR. THERE ARE SOME
FACTS THAT I WILL REVIEW WITH YOU.

BUT THIS IS YOUR BINDER TO USE FOR THE COURSE OF THE
TRIAL, SO THAT YOU CAN TAKE NOTES. WE TAKE PICTURES OF ALL OF
THE WITNESSES. WE WILL GIVE YOU A PICTURE SO THAT YOU CAN
REMEMBER WHO IT IS THAT IS TESTIFYING. WE DO ALL SORTS OF
THINGS TO HELP YOU REMEMBER WHAT YOU'VE HEARD IN COURT SO THAT
YOU CAN DO YOUR JOB. ALL RIGHT?

SO, NOW THAT YOU HAVE BEEN SEATED AS JURIES -- AS JURORS

1 IN THIS CASE, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW. THESE
2 INSTRUCTIONS ARE PRELIMINARY TO HELP YOU UNDERSTAND THE
3 PRINCIPLES THAT APPLY TO CIVIL CASES AND TO HELP YOU
4 UNDERSTAND THE EVIDENCE AS YOU LISTEN TO IT.

5 THESE INSTRUCTIONS ARE NOT GIVEN TO YOU PHYSICALLY, SO
6 JUST PAY ATTENTION. AT THE END I HAVE ANOTHER SET OF
7 INSTRUCTIONS. THOSE I WILL GIVE YOU PHYSICALLY FOR YOUR
8 REVIEW DURING DELIBERATIONS, BUT THESE ARE MORE BASIC
9 PRINCIPLES THAT YOU SHOULD CONSIDER.

10 IT IS YOUR DUTY TO FIND THE FACTS FROM ALL OF THE EVIDENCE
11 IN THE CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE
12 IT TO YOU AND YOU MUST FOLLOW THE LAW WHETHER YOU AGREE WITH
13 IT OR NOT. YOU MUST NOT BE INFLUENCED BY PERSONAL LIKES OR
14 DISLIKES, OPINIONS, PREJUDICES, OR SYMPATHY AND THAT MEANS YOU
15 MUST DECIDE THE CASE SOLELY ON THE EVIDENCE THAT IS PRESENTED
16 BEFORE YOU. YOU WILL RECALL JUST MOMENTS AGO, YOU TOOK AN
17 OATH DO SO.

18 PLEASE DO NOT READ INTO THESE INSTRUCTIONS OR ANYTHING
19 THAT I MAY SAY OR DO THAT I HAVE AN OPINION REGARDING THE
20 EVIDENCE OR WHAT YOUR VERDICT SHOULD BE. DURING THIS CASE,
21 WHEN A PARTY HAS THE BURDEN OF PROVING ANY CLAIM OR
22 AFFIRMATIVE DEFENSE BY A PREPONDERANCE OF THE EVIDENCE, IT
23 MEANS THAT YOU MUST BE PERSUADED BY THE EVIDENCE THAT THE
24 CLAIM OR AFFIRMATIVE DEFENSE IS PROBABLY MORE TRUE THAN NOT.
25 THAT'S WHAT PREPONDERANCE OF THE EVIDENCE MEANS. WHAT'S MORE

1 PROBABLY TRUE THAN NOT.

2 THIS IS NOT A CRIMINAL CASE WHERE THE STANDARD IS BEYOND A
3 REASONABLE DOUBT. IT IS A CIVIL CASE, AND THE CIVIL CASE
4 STANDARD IS PREPONDERANCE OF THE EVIDENCE.

5 SO YOU SHOULD BASE YOUR DECISION ON ALL OF THE EVIDENCE
6 REGARDLESS OF WHICH PARTY PRESENTS IT. SO WHAT IS THE
7 EVIDENCE? THE EVIDENCE YOU ARE TO CONSIDER WITH RESPECT TO
8 THE FACTS ARE THE FOLLOWING: ONE, THE SWORN TESTIMONY OF ANY
9 WITNESS. TWO, THE EXHIBITS THAT ARE ADMITTED INTO EVIDENCE.
10 THREE, ANY FACTS TO WHICH THE LAWYERS HAVE AGREED. AND FOUR,
11 ANY FACTS THAT I WILL INSTRUCT YOU TO ACCEPT AS PROVED.

12 NOW, IN REACHING YOUR VERDICT YOU CAN ONLY CONSIDER THAT
13 TESTIMONY AND EVIDENCE. CERTAINLY THINGS ARE NOT EVIDENCE AND
14 YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE.
15 THEY ARE THE FOLLOWING:

16 ONE. THE ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT
17 EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY SAY IN
18 THEIR OPENING STATEMENTS AND CLOSING ARGUMENTS AND AT OTHER
19 TIMES DURING THE TRIAL, THEY SAY IT TO HELP YOU UNDERSTAND OR
20 INTERPRET THE EVIDENCE. BUT IT IS NOT EVIDENCE.

21 TWO. QUESTIONS AND OBJECTIONS BY THE LAWYERS ARE NOT
22 EVIDENCE. LAWYERS HAVE A DUTY TO SHARE -- OR TO THEIR CLIENTS
23 TO OBJECT WHEN THEY BELIEVE A QUESTION IS NOT APPROPRIATE OR
24 IMPROPER UNDER THE RULES OF EVIDENCE, AND YOU SHOULD NOT BE
25 INFLUENCED BY THE OBJECTION OR THE COURT'S RULING ON IT.

1 THREE. TESTIMONY THAT IS EXCLUDED OR STRICKEN OR THAT YOU
2 HAVE BEEN INSTRUCTED TO DISREGARD IS NOT EVIDENCE AND YOU MUST
3 NOT CONSIDER IT. IN ADDITION, SOMETIMES I'LL ALLOW EVIDENCE
4 FOR A LIMITED PURPOSE. AND WHEN I HAVE INSTRUCTED YOU TO
5 CONSIDER IT FOR THAT PURPOSE, AND I WILL EXPLAIN IT AT THE
6 TIME, YOU MAY ONLY DO SO AND CONSIDER IT FOR THAT PURPOSE.

7 ONE OF THE THINGS I DO WHEN I'M TAKING NOTES, IF I THEN
8 GET AN OBJECTION AND I SUSTAIN THE OBJECTION AND STRIKE IT, I
9 LITERALLY STRIKE IT FROM MY NOTES. SO THAT WAY I REMEMBER I'M
10 NOT SUPPOSED TO CONSIDER IT.

11 ANYTHING YOU HEAR OR SEE WHEN COURT IS NOT IN SESSION IS
12 NOT EVIDENCE AND YOU ARE TO DECIDE THE CASE SOLELY ON THE
13 EVIDENCE RECEIVED.

14 SO EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT
15 EVIDENCE IS DIRECT PROOF OF A FACT, SUCH AS THE TESTIMONY OF A
16 WITNESS ABOUT WHAT THAT WITNESS PERSONALLY SAW, HEARD, OR DID.
17 CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM
18 WHICH YOU COULD FIND SOME OTHER FACT. AND YOU SHOULD CONSIDER
19 BOTH KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION ABOUT
20 THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL
21 EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE ANY
22 EVIDENCE.

23 SO LET ME GIVE YOU AN EXAMPLE. IMAGINE THAT YOU WAKE UP
24 IN THE MORNING AND YOU SEE WATER ON THE SIDEWALK. WELL, THE
25 WATER COULD BE EVIDENCE THAT IT RAINED OVERNIGHT. IT COULD

1 ALSO BE EVIDENCE THAT SOMEONE LEFT A GARDEN HOSE ON. SO
2 BEFORE YOU DECIDE WHAT A FACT IS AND WHETHER IT'S PROVED BY
3 CIRCUMSTANTIAL EVIDENCE, YOU MUST CONSIDER ALL OF THE EVIDENCE
4 IN LIGHT OF REASON, EXPERIENCE, AND COMMON SENSE.

5 WITH RESPECT TO OBJECTIONS, THERE ARE RULES OF EVIDENCE
6 THAT CONTROL WHAT CAN BE RECEIVED INTO EVIDENCE. AND WHEN A
7 LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT INTO EVIDENCE AND
8 THE OTHER LAWYER ON THE OTHER SIDE THINKS IT IS NOT PERMITTED,
9 THAT LAWYER MAY OBJECT. IF I OVERRULE THE OBJECTION, THE
10 QUESTION CAN BE ANSWERED OR EXHIBIT RECEIVED. IF I SUSTAIN
11 THE OBJECTION, THE QUESTION CANNOT BE ANSWERED AND THE
12 EXHIBITS NOT RECEIVED. WHEN I SUSTAIN AN OBJECTION, YOU MUST
13 IGNORE THE QUESTION OR NOT GUESS WHAT THE ANSWER MIGHT HAVE
14 BEEN.

15 AND AS I SAID, IF I'VE STRICKEN IT, THEN YOU MAY NOT
16 CONSIDER IT. IN DECIDING THE FACTS IN THIS CASE, YOU MIGHT
17 HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY
18 NOT TO BELIEVE.

19 YOU MAY BELIEVE EVERYTHING A WITNESS SAYS OR PART OF IT,
20 OR NONE OF IT. IN CONSIDERING THE TESTIMONY OF ANY WITNESS,
21 YOU MAY CONSIDER THE FOLLOWING:

22 THE OPPORTUNITY AND ABILITY THAT A WITNESS MAY SEE, HEAR,
23 OR KNOW THE THINGS THAT THEY TESTIFY TO, THE WITNESS'S MEMORY,
24 THE WITNESS'S MANNER WHILE TESTIFYING, THE WITNESS'S INTEREST
25 IN THE OUTCOME OF THE CASE, IF ANY, THE WITNESS'S BIAS OR

1 PREJUDICE, IF ANY, AND WHETHER OTHER EVIDENCE CONTRADICTS THAT
2 WITNESS'S TESTIMONY. THE REASONABLENESS OF THE TESTIMONY IN
3 LIGHT OF ALL THE OTHER EVIDENCE, AND ANY OTHER FACTS WHICH
4 BEAR ON THAT PERSON'S BELIEVABILITY.

5 SOMETIMES A WITNESS MAY SAY SOMETHING THAT IS NOT
6 CONSISTENT WITH SOMETHING ELSE HE OR SHE SAID. SOMETIMES
7 DIFFERENT WITNESSES MAY GIVE DIFFERENT VERSIONS OF WHAT
8 HAPPENED.

9 PEOPLE OFTEN FORGET THINGS. THEY MAY MAKE MISTAKES IN
10 WHAT THEY REMEMBER. ALSO TWO PEOPLE COULD SEE THE EXACT SAME
11 EVENT AND REMEMBER IT DIFFERENTLY.

12 YOU MAY CONSIDER THESE DIFFERENCES, BUT DO NOT DECIDE THE
13 TESTIMONY IS UNTRUE JUST BECAUSE IT DIFFERS FROM OTHER
14 TESTIMONY. HOWEVER, IF YOU DECIDE THAT A WITNESS HAS
15 DELIBERATELY TESTIFIED UNTRUTHFULLY ABOUT SOMETHING IMPORTANT,
16 YOU MAY CHOOSE NOT TO BELIEVE ANYTHING THAT THAT WITNESS SAYS.
17 ON THE OTHER HAND, IF YOU THINK THE WITNESS TESTIFIED
18 UNTRUTHFULLY ABOUT SOME THINGS BUT TRUTHFULLY ABOUT OTHERS,
19 YOU MAY ACCEPT THE PART THAT YOU BELIEVE IS TRUE AND IGNORE
20 THE REST.

21 THE WEIGHT OF THE EVIDENCE AS TO A FACT DOES NOT
22 NECESSARILY DEPEND ON THE NUMBER OF WITNESSES WHO TESTIFY.
23 WHAT IS IMPORTANT IS HOW BELIEVABLE THE WITNESSES ARE AND HOW
24 MUCH WEIGHT YOU THINK THEIR TESTIMONY DESERVES.

25 NOW, I URGE YOU TO PAY CLOSE ATTENTION TO THE TRIAL

1 TESTIMONY AS IT'S GIVEN BECAUSE DURING DELIBERATIONS YOU WILL
2 NOT HAVE A TRANSCRIPT. ALL RIGHT? SO YOU NEED TO MAKE SURE
3 THAT YOU LISTEN CAREFULLY AND, TO THE EXTENT YOU WANT TO TAKE
4 NOTES, YOU TAKE NOTES.

5 HOWEVER, IF YOU TAKE NOTES, PLEASE KEEP THEM TO YOURSELF
6 UNTIL YOU GO TO THE JURY ROOM TO DECIDE THE CASE. DO NOT LET
7 NOTE-TAKING DISTRACT YOU. WHEN YOU LEAVE AT THE END OF THE
8 DAY, YOU MUST LEAVE YOUR NOTEBOOKS AND ALL YOUR NOTES IN THE
9 JURY ROOM. NO ONE WILL READ THEM.

10 WHETHER OR NOT YOU TAKE NOTES, YOU SHOULD RELY ON YOUR OWN
11 MEMORY OF THE EVIDENCE. NOTES ARE THERE TO HELP YOU REMEMBER
12 AND ASSIST IN YOUR MEMORY. SO DO NOT BE OVERLY INFLUENCED BY
13 YOUR NOTES OR THOSE OF OTHER JURORS.

14 FROM TIME TO TIME DURING THE TRIAL, IT MAY BE NECESSARY
15 FOR ME TO TALK TO THE LAWYERS OUTSIDE OF YOUR PRESENCE. I
16 RARELY IF EVER DO THIS, BUT SOMETIMES IT HAPPENS.

17 SO EITHER BY HAVING A CONFERENCE AT SIDEBAR OR I MAY ASK
18 YOU TO LEAVE THE COURTROOM AND I MAY CALL A RECESS. PLEASE
19 UNDERSTAND THAT WHILE YOU ARE WAITING WE ARE HERE WORKING.
20 THE PURPOSE OF THE CONFERENCE IS NOT TO KEEP RELEVANT
21 INFORMATION FROM YOU, BUT TO MAKE SURE AND DECIDE HOW EVIDENCE
22 IS TO BE TREATED UNDER THE RULES OF EVIDENCE AND TO AVOID
23 CONFUSION AND ERROR.

24 I WILL DO WHAT I CAN TO KEEP THE LENGTH AND NUMBER OF
25 THESE CONFERENCES TO A MINIMUM, AND I DON'T ALWAYS GRANT AN

1 ATTORNEY A REQUEST FOR A CONFERENCE BECAUSE WE MEET BEFORE YOU
2 GET HERE. BUT IN ANY EVENT, DO NOT CONSIDER MY GRANTING OR
3 DENYING ANY REQUEST ANY INDICATION OF MY OPINION ABOUT THE
4 CASE OR WHAT YOUR VERDICT SHOULD BE.

5 IN THE FRONT POCKET OF YOUR NOTEBOOKS, THERE IS A BLANK
6 FORM AND WE CAN GIVE YOU MORE IF NEEDED. I ALLOW JURORS TO
7 PROPOSE QUESTIONS TO WITNESSES AFTER THE LAWYERS HAVE
8 COMPLETED THEIR EXAMINATION.

9 THE PURPOSE IS TO ALLOW YOU TO CLARIFY THE TESTIMONY. YOU
10 ARE NOT TO EXPRESS ANY OPINION ABOUT THE TESTIMONY. YOU ARE
11 NOT TO ARGUE WITH THE WITNESS. IF YOU PROPOSE A QUESTION,
12 REMEMBER THAT YOUR ROLE IS TO BE THE NEUTRAL FACT FINDER,
13 RIGHT? NOT AN ADVOCATE FOR ONE SIDE OR THE OTHER. SO BEFORE
14 I EXCUSE A WITNESS, I'LL OFFER AN OPPORTUNITY AND, IF YOU HAVE
15 A QUESTION, EITHER AT A BREAK OR AT THE END, PLEASE LET ME
16 KNOW, WRITE IT DOWN, AND WE WILL COLLECT IT. I WILL ALWAYS
17 REVIEW THE QUESTION WITH THE LAWYERS TO MAKE SURE IT IS
18 APPROPRIATE AND PROPER UNDER THE RULES OF EVIDENCE.

19 THERE ARE SOME PROPOSED QUESTIONS THAT I DO NOT PERMIT.
20 AND THERE ARE SOME WHERE I HAVE CHANGED THE WORDING SLIGHTLY
21 TO MAKE IT APPROPRIATE. THIS MIGHT HAPPEN, AGAIN, DUE TO THE
22 RULES OF EVIDENCE OR FOR SOME OTHER LEGAL REASONS OR SOMETIMES
23 BECAUSE WE EXPECT THE QUESTION TO BE ANSWERED WITH A DIFFERENT
24 WITNESS AND THIS ISN'T THE APPROPRIATE WITNESS.

25 SO DO NOT GIVE UNDUE WEIGHT TO QUESTIONS THAT YOU OR

1 OTHERS PROPOSE, BUT YOU SHOULD EVALUATE THE ANSWERS IN THE
2 SAME MANNER AS YOU WOULD EVALUATE ALL OTHER EVIDENCE IN THE
3 CASE.

4 BY GIVING YOU THIS OPPORTUNITY TO PROPOSE QUESTIONS, I'M
5 NOT SUGGESTING OR EVEN REQUESTING THAT YOU DO IT. IT'S JUST
6 YOUR OPPORTUNITY.

7 LET ME MAKE -- I'LL HAVE SOME MORE INSTRUCTIONS FOR YOU
8 BEFORE YOU LEAVE AT THE END OF THE DAY. LET ME SAY THIS: IN
9 TERMS OF HOW THE TRIAL PROCEEDS, EACH SIDE IS GOING TO BE
10 GIVEN AN OPPORTUNITY TO MAKE AN OPENING STATEMENT. REMEMBER
11 AN OPENING STATEMENT IS NOT EVIDENCE. IT'S JUST SIMPLY AN
12 OUTLINE TO HELP YOU UNDERSTAND WHAT EACH SIDE BELIEVES THE
13 EVIDENCE WILL SHOW.

14 THE PLAINTIFF WILL, AFTER THIS, TOMORROW -- BEGINNING
15 TOMORROW THE PLAINTIFF WILL PRESENT EVIDENCE AND THEN COUNSEL
16 FOR DEFENSE MAY CROSS-EXAMINE AND THEN THE DEFENSE GETS TO
17 PRESENT ITS CASE. AFTER ALL THE EVIDENCE HAS BEEN PRESENTED,
18 I'LL INSTRUCT YOU ON THE LAW THAT APPLIES TO THE CASE AND THE
19 ATTORNEYS THE MAKE CLOSING ARGUMENTS, AFTER WHICH YOU WILL GO
20 INTO THE JURY ROOM TO DELIBERATE.

21 ONE OF THE FIRST THINGS I'LL DO AFTER OPENINGS IS TO READ
22 YOU THE FACTS THAT THE PARTIES HAVE STIPULATED TO, SO YOU WILL
23 BE INSTRUCTED TO TREAT THOSE FACTS AS PROVEN AND YOU ACTUALLY
24 HAVE A COPY OF THEM THERE IN YOUR BINDER, WHICH I THINK SOME
25 OF THE PARTIES MAY REFER TO. BUT IN TERMS OF KEEPING AN OPEN

1 MIND, LET ME SUGGEST TO YOU THE FOLLOWING:

2 THINK ABOUT A TRIAL LIKE A PUZZLE. DOES ANYBODY LIKE
3 PUZZLES? I'M KIND OF A PUZZLER, SO I LIKE PUZZLES. BUT IN A
4 TRIAL, THERE IS NO COVER, A LOT OF PIECES. SO THE OPENING
5 STATEMENTS ARE REALLY IN A WAY, EACH SIDE IS TELLING YOU WHAT
6 THAT COVER SHOULD LOOK LIKE. THAT'S WHAT AN OPENING STATEMENT
7 IS. AND THE TRIAL IS US COLLECTING ALL OF THOSE PIECES TO THE
8 PUZZLE AND PUTTING THEM IN THE BOX.

9 BUT UNTIL THEY ARE ALL IN THE BOX, WE CAN'T FIGURE OUT
10 WHAT THE COVER LOOKS LIKE. AND AT THE END OF THE TRIAL, YOU
11 WILL HAVE ALL THOSE PIECES IN THE BOX AND THEN THE LAWYERS
12 WILL COME BACK AND THEY WILL ARGUE ABOUT WHAT THEY THINK THAT
13 COVER LOOKS LIKE, BASED UPON THE ACTUAL EVIDENCE THAT YOU
14 HEARD.

15 BUT THEN YOU GET TO GO BACK AND DECIDE WHAT DID ALL THAT
16 EVIDENCE SHOW? WHAT DOES THE COVER OF THAT BOX LOOK LIKE,
17 GIVEN THE EVIDENCE THAT WE'VE HEARD? IT IS KIND OF WHY WE
18 TELL YOU TO WAIT, WAIT BEFORE MAKING A DECISION UNTIL YOU HAVE
19 ALL THE PIECES. CAN'T DECIDE WHAT THAT COVER LOOKS LIKE UNTIL
20 YOU KNOW WHAT ALL YOU -- WHAT YOU HAVE. SO PERHAPS THAT WILL
21 HELP YOU.

22 OKAY. AT THIS POINT I'M GOING TO ALLOW THE PARTIES TO
23 MAKE THEIR OPENING STATEMENTS. WE WILL BEGIN WITH MR. BURSOR.

24 YOU MAY PROCEED. AND WE MAY HAVE A COUPLE OF MINUTES TO
25 GET IT SET UP, OR IS IT ALL SET UP?

OPENING STATEMENT - BURSOR

1 **MR. BURSOR:** YOUR HONOR, YOU JUST MENTIONED THAT YOU
2 WERE GOING TO READ THE STIPULATED FACTS?

3 **THE COURT:** WHEN WE GET TO THE EVIDENTIARY PORTION.

4 **MR. BURSOR:** OKAY.

5 **THE COURT:** BUT THEY DO HAVE IT IN THEIR BINDER IF
6 YOU WANT TO REFER TO IT, MR. BURSOR. WE ARE JUST NOT AT THE
7 EVIDENTIARY PORTION YET.

8 **MR. BURSOR:** THANK YOU, YOUR HONOR.

9 **OPENING STATEMENT**

10 **MR. BURSOR:** GOOD MORNING AGAIN.

11 MY NAME IS SCOTT BURSOR, AND I REPRESENT -- I'M ONE OF THE
12 LAWYERS REPRESENTING THE PLAINTIFF IN THIS LAWSUIT. AND THE
13 PLAINTIFF IS A GENTLEMEN NAMED IGNACIO PEREZ. HE'S SITTING
14 NEXT TO ME AT THE COUNSEL TABLE RIGHT HERE. MR. PEREZ, CAN
15 YOU STAND UP FOR A MOMENT?

16 THANK YOU.

17 THE OPENING STATEMENT IS MY OPPORTUNITY TO TELL YOU ABOUT
18 THE PROOF WE ARE GOING TO PUT ON AT THE TRIAL. AND ONE OF THE
19 THINGS THAT WE'RE GOING TO PROVE IS THAT ON MAY 28TH OF 2015,
20 MR. PEREZ'S CELLPHONE RANG AND HE ANSWERED THE CALL. AND WE
21 WILL PROVE THAT, WHEN HE ANSWERED THE PHONE CALL, HE HEARD A
22 PRERECORDED MESSAGE, PRESS ONE FOR THIS, PRESS TWO FOR THAT.
23 WE WILL PROVE THAT PHONE CALL LASTED 54 SECONDS.

24 WE WILL PROVE THAT THE PARTY WHO MADE THAT PHONE CALL WAS
25 THE DEFENDANT, RASH CURTIS. WE WILL PROVE THAT THEY MADE THAT

OPENING STATEMENT - BURSOR

1 PHONE CALL WITH A MACHINE CALLED AN AUTO DIALER. WE WILL
2 PROVE THAT IT WAS THE GLOBAL CONNECT AUTO DIALER THAT CALLED
3 MR. PEREZ'S CELLPHONE AND WE WILL PROVE THAT THAT DIDN'T
4 HAPPEN JUST THAT ONE TIME ON MAY 28TH, 2015. WE WILL PROVE
5 THAT THE DEFENDANT CALLED MR. PEREZ'S CELLPHONE AT LEAST 26
6 TIMES BETWEEN MAY 28TH OF 2015 AND JUNE 7 OF 2016.

7 WE'LL PROVE ALL THOSE THINGS BUT WE ARE GOING TO PROVE
8 SOMETHING ELSE AS WELL, WHICH IS MR. PEREZ DID NOT OWE ANY
9 DEBT TO RASH CURTIS OR TO ANY OF RASH CURTIS' CLIENTS. HE WAS
10 NOT THE PERSON THAT THEY WERE TRYING TO CALL. THEY WERE
11 TRYING TO CALL SOMEONE ELSE BUT THEY GOT MR. PEREZ'S NUMBER
12 INSTEAD AND CALLED HIM.

13 THE JUDGE MENTIONED IN YOUR WHITE BINDER YOU HAVE A SET OF
14 STIPULATED FACTS AND STIPULATED FACT NO. 35 SAYS THAT RASH
15 CURTIS HAS NEVER HAD AN ACCOUNT IN MR. PEREZ'S NAME AND THAT
16 IS TRUE.

17 SO MR. PEREZ HAD NOTHING TO DO WITH THESE PEOPLE BUT THEY
18 CALLED HIM 26 TIMES. WE WILL PROVE THAT HE ANSWERED 14 OF
19 THOSE PHONE CALLS AND THAT HE ANSWERED 14 CALLS THAT WERE SIX
20 SECONDS OR LONGER IN DURATION, INDICATING THAT THE PHONE CALLS
21 WERE MADE WITH A PRERECORDED VOICE. AND THAT IS A VERY
22 SPECIFIC THING FOR ME TO SAY THAT WE ARE GOING TO PROVE BUT
23 THE REASON THAT I CAN SAY SO SPECIFICALLY WHAT WE ARE GOING TO
24 PROVE IS THAT, WHEN A PHONE CALL IS MADE, THERE'S A RECORD OF
25 THE PHONE CALL, JUST LIKE YOU'VE SEEN ON YOUR PHONE BILLS.

OPENING STATEMENT - BURSOR

1 AND SO WE WILL PROVE THAT ALL THESE CALLS HAPPENED, WE WILL
2 PROVE THE EXACT DATE AND TIME THEY HAPPENED, WE WILL PROVE THE
3 EXACT LENGTH OF EACH PHONE CALL WITHIN A 62ND MARGIN AND WE
4 WILL PROVE ALL THOSE THINGS WITH THE DEFENDANT'S OWN CALL
5 LOGS.

6 NOW, BECAUSE HE RECEIVED THESE PHONE CALLS, MR. PEREZ SUED
7 THE COMPANY, SUED RASH CURTIS FOR VIOLATING A STATUTE CALLED
8 THE TELEPHONE CONSUMER PROTECTION ACT, WHICH THE JUDGE
9 MENTIONED EARLIER.

10 THE COURT -- THE COURT DECIDES CERTAIN THINGS AND YOU ARE
11 GOING TO DECIDE CERTAIN THINGS. AND ONE ISSUE THAT MR. PEREZ
12 HAS BROUGHT TO THE COURT'S ATTENTION IS THAT HE'S NOT THE ONLY
13 PERSON THAT RECEIVED THESE PHONE CALLS. WE WILL PROVE THAT
14 THE DEFENDANT MADE 79 MILLION PHONE CALLS THROUGH THREE AUTO
15 DIALERS. YOU'RE GOING TO HEAR ABOUT THREE AUTO DIALERS IN
16 THIS CASE. ONE OF THEM IS CALLED GLOBAL CONNECT. WE WILL
17 PROVE THE DEFENDANT USED A SECOND AUTO DIALER CALLED VIC,
18 V-I-C. WE WILL PROVE THE DEFENDANT USED A THIRD AUTO DIALER
19 CALLED TCN. WE WILL PROVE THROUGH THOSE THREE AUTO DIALERS
20 THE DEFENDANT MADE 79 MILLION PHONE CALLS.

21 NOW, SOME OF THOSE CALLS WERE MADE TO PEOPLE THAT OWED
22 DEBTS AND YOU HEARD A LOT OF DISCUSSION OF THAT DURING VOIR
23 DIRE, ABOUT DEBT COLLECTORS CALLING ABOUT DEBTS. BUT
24 MR. PEREZ DID NOT OWE ANY DEBT. AND THERE WERE A LOT OF
25 PEOPLE LIKE MR. PEREZ, WHO ALSO DID NOT OWE DEBTS, WHO ALSO

OPENING STATEMENT - BURSOR

1 GOT A LOT OF THESE PHONE CALLS. WE WILL PROVE THAT THERE WERE
2 40,420 UNIQUE PHONE NUMBERS THAT THE DEFENDANT CALLED TO
3 PEOPLE WHO WERE NOT DEBTORS ON ACCOUNTS WITH RASH CURTIS AND
4 WE WILL PROVE THAT RASH CURTIS MADE 534,698 PHONE CALLS TO
5 THOSE PEOPLE. AND THE WAY WE WILL PROVE THAT IS WITH THE
6 PHONE BILL, WITH THE CALL LOGS, WITH THE AUTO DIALER CALL
7 LOGS. WE KNOW EXACTLY WHAT THEY DID AND WE KNOW EXACTLY WHEN
8 THEY DID IT.

9 NOW, BECAUSE THERE ARE SO MANY OF THOSE PEOPLE, THE COURT
10 APPOINTED MR. PEREZ AS CLASS REPRESENTATIVE OF THE CERTIFIED
11 CLASSES IN THIS CASE. AND THE COURT APPOINTED MY LAW FIRM,
12 BURSOR & FISHER, AS CLASS COUNSEL TO REPRESENT THE CERTIFIED
13 CLASSES IN THIS CASE. SO OUR JOB IN THIS CASE IS TO PRESENT
14 THE EVIDENCE, NOT JUST OF THE PHONE CALLS THAT THE DEFENDANT
15 MADE TO MR. PEREZ, BUT ALSO THE PHONE CALLS TO THE 40,420
16 OTHER PEOPLE WHO DIDN'T HAVE AN ACCOUNT WITH RASH CURTIS BUT
17 STILL GOT ALL THESE PHONE CALLS. AND I'M GOING TO EXPLAIN TO
18 YOU HOW WE'RE GOING TO PRESENT THAT EVIDENCE AND, AT THE END
19 OF THE CASE, YOU'RE GOING TO BE ASKED TO COUNT THOSE PHONE
20 CALLS AND DETERMINE HOW MANY WERE MADE. AND SO OUR JOB WAS TO
21 COUNT THEM, TO PRESENT YOU THE EVIDENCE OF OUR COUNT, AND --
22 SO THAT YOU CAN EVALUATE THAT EVIDENCE AND DETERMINE HOW MANY
23 PHONE CALLS THERE WERE.

24 SO, I HAVE SOME SLIDES THAT I AM GOING TO DISPLAY ON YOUR
25 SCREEN TO SHOW YOU HOW WE COUNTED THE PHONE CALLS.

OPENING STATEMENT - BURSOR

(DISPLAYED ON SCREEN.)

THE CLERK: FRANCES, CAN WE MAKE THIS ONE SHOW UP ON
THE --

THE COURT: IT'S UP.

THE CLERK: IS IT ON?

THE COURT: YOUR MONITOR MAY NOT BE UP BUT I SEE IT
ON THE FLAT SCREENS. DO YOU SEE LIKE THE LAVA?

MR. BURSOR: I SEE BLUE -- MINE IS BLUE, THOUGH.

THE CLERK: YOU ARE THE MIDDLE ONE CART VIDEO. DO
YOU CLICK? CAN YOU CLICK?

MR. BURSOR: NO, I'M RIGHT HERE.

THE CLERK: THIS IS NOT MY SCREEN. I DON'T KNOW.

MR. BURSOR: SOMETIMES IT WORKS AND SOMETIMES IT
TAKES A LITTLE TIME. WE ARE GOING TO GET IT SORTED OUT.

THERE WE GO.

(DISPLAYED ON SCREEN.)

MR. BURSOR: OKAY. SO OUR JOB IN THIS CASE AS CLASS
COUNSEL WAS TO COUNT HOW MANY PHONE CALLS THE DEFENDANTS MADE
THAT WERE LIKE THE PHONE CALLS THAT MR. PEREZ RECEIVED. THAT
IS NOT AN EASY THING TO DO BECAUSE, AS I SAID, THERE WERE CALL
LOGS FOR 79 MILLION PHONE CALLS. IT WAS A BIG DATA CRUNCH
JOB. SO THE WAY WE DID THAT WAS WE HAD TO HIRE SOME EXPERTS
TO CRUNCH THE DATA. AND I'M GOING TO TELL YOU ABOUT THEM.

THE FIRST EXPERT THAT YOU WILL HEAR FROM IS A GENTLEMEN
NAMED COLIN WEIR. HE IS AN EXPERT IN TELECOMMUNICATIONS AND

OPENING STATEMENT - BURSOR

1 DATA ANALYSIS. WE HAVE A SECOND EXPERT NAMED ANYA
2 VERKOVSKAYA. SHE IS AN EXPERT IN CLASS ACTION ADMINISTRATION
3 AND DATA ANALYSIS. AND WE HAVE A THIRD EXPERT, WHOSE NAME IS
4 RANDALL SNYDER AND HE IS AN EXPERT IN TELECOMMUNICATIONS
5 TECHNOLOGY.

6 NOW, I WANT TO BEGIN WITH MR. SNYDER.

7 I MENTIONED THAT THE PHONE CALLS WERE ALL MADE WITH
8 TECHNOLOGY THAT IS CALLED AN AUTO DIALER. WHAT THAT MEANS IS
9 THERE IS NOT A HUMAN BEING PUNCHING BUTTONS ON A PHONE TO MAKE
10 THESE PHONE CALLS. THERE IS A MACHINE, A COMPUTER THAT DIALS
11 THE PHONE CALLS VERY FAST AND IN VERY HIGH VOLUME. IN OTHER
12 WORDS, LOTS OF CALLS ALL AT ONCE.

13 MR. SNYDER IS AN EXPERT IN THOSE MACHINES AND HOW THEY
14 WORK AND AN EXPERT IN HOW THOSE MACHINES KEEP RECORDS AND HOW
15 TO UNDERSTAND THOSE RECORDS. SO MR. SNYDER REVIEWED THE
16 MANUALS FOR THE AUTO DIALERS, LOOKED AT SAMPLES OF THE
17 RECORDS, AND TOLD US HOW WE COULD DO OUR JOB, WHICH WAS TO
18 IDENTIFY THE CALLS THAT WERE MADE, JUST THE CALLS THAT WERE
19 MADE TO CLASS MEMBERS LIKE MR. PEREZ WHO DID NOT OWE A DEBT.

20 SO, SINCE YOU ARE GOING TO BE ASKED TO DO THAT COUNT WITH
21 US, HOW MANY PHONE CALLS THERE WERE, I'M GOING TO SHARE WITH
22 YOU THE CRITERIA THAT WE HAD TO USE TO NARROW DOWN THE RECORDS
23 FROM THE 79 MILLION PHONE CALLS THAT WE STARTED WITH, DOWN TO
24 THE 534,698 CALLS TO CLASS MEMBERS THAT WE ENDED UP WITH.

25 **THE COURT:** DOES ANYBODY WANT A PEN WHO MAY NOT HAVE

OPENING STATEMENT - BURSOR

1 ONE?

2 (PAUSE IN THE PROCEEDINGS.)

3 **MR. BURSOR:** AND YOU ARE GOING TO HEAR THESE NUMBERS
4 OVER AND OVER AGAIN, SO IF YOU MISS THE EXACT NUMBER, DON'T
5 WORRY TOO MUCH BECAUSE I'M GOING TO REPEAT THEM QUITE OFTEN.

6 SO, OUR JOB IN THIS CASE AS CLASS COUNSEL AND MR. PEREZ'S
7 JOB AS THE CLASS REPRESENTATIVE WAS TO IDENTIFY THE PHONE
8 CALLS THAT RASH CURTIS MADE TO PHONE NUMBERS THAT WERE
9 OBTAINED BY SKIP-TRACING, THAT WERE MADE USING EITHER AN AUTO
10 DIALER OR PRERECORDED MESSAGE TO CELLPHONE NUMBERS THAT
11 BELONGED TO NON-DEBTORS. IN OTHER WORDS, PEOPLE LIKE
12 MR. PEREZ, THEY DIDN'T EVEN HAVE AN ACCOUNT.

13 SO MR. WEIR STARTED OFF THIS JOB BY LOOKING AT THE DEBTORS
14 ACCOUNT RECORDS. THE ACCOUNT RECORDS ARE CONTAINED IN A
15 DATABASE. I'M GOING TO SHOW YOU A SAMPLE OF THAT DATABASE.
16 MR. WEIR ALSO LOOKED AT THE CALL LOGS FOR THE THREE AUTO
17 DIALERS. THOSE CALL LOGS CONTAINED RECORDS OF MORE THAN
18 79 MILLION PHONE CALLS. I'M GOING TO SHOW YOU A SAMPLE OF
19 WHAT THOSE CALL LOGS LOOKED LIKE. AND MR. WEIR CREATED THE
20 SUMMARIES THAT YOU'RE GOING TO SEE DURING THE TRIAL BECAUSE I
21 CAN'T SHOW YOU A LOG OF 79 MILLION PHONE CALLS. IT'S JUST TOO
22 BIG. SO I HAVE TO SHOW YOU A SAMPLE OR AN EXCERPT SO THAT YOU
23 CAN SEE WHAT IT LOOKS LIKE, AND THEN MR. WEIR WILL TESTIFY
24 ABOUT THOSE DATA AND WHAT HE DID WITH THEM.

25 SO LET'S START WITH THE DEBTOR ACCOUNTS RECORDS. RASH

OPENING STATEMENT - BURSOR

1 CURTIS IS A DEBT COLLECTION AGENCY. THEY HAVE ACCOUNTS OF
2 DEBTS THAT HAVE BEEN REFERRED TO THEM BY CLIENTS AND THEY
3 STORE THOSE IN A DATABASE. THE DATABASE LOOKS LIKE THIS.

4 THIS IS EXHIBIT 60. IT'S AN EXHIBIT THAT IS GOING TO BE
5 IN EVIDENCE DURING THE TRIAL. AND I EXPECT THAT IT IS
6 PROBABLY TOO SMALL FOR YOU TO READ ON THAT SCREEN RIGHT NOW.
7 SO -- BUT I CAN TELL YOU THAT IT'S A DATABASE THAT INCLUDES
8 DEBTORS' NAMES, DEBTORS' ADDRESSES AND DEBTORS' PHONE NUMBERS.
9 NOW, I'M GOING TO ZOOM IN ON THE TOP RIGHT-HAND PORTION OF
10 THIS EXCERPT FROM THE DATABASE. IT'S EXHIBIT 60. YOU ARE
11 GOING TO SEE IT DURING THE TRIAL. THIS WILL NOT BE THE ONLY
12 TIME YOU'RE GOING TO SEE IT. YOU WILL SEE IT PLENTY.

13 THE POINT I WANT TO MAKE ABOUT THIS DATABASE THAT IS
14 IMPORTANT TO UNDERSTAND IS THAT THE DATABASE HAS FIELDS FOR UP
15 TO TEN PHONE NUMBERS. SO I HOPE THAT THAT IS NOW LEGIBLE. WE
16 ZOOMED IN SO YOU COULD SEE ON THIS MICROSOFT EXCEL EXCERPT
17 FROM THE DATABASE. COLUMNS H THROUGH Q ARE PHONE FIELDS ONE
18 THROUGH TEN. AND THE FIRST ROW IS THE HEADER ROW. IT SAYS
19 PHONE ONE, PHONE TWO, PHONE THREE, UP TO PHONE TEN.

20 I SEE I INADVERTENTLY TOUCHED THE SCREEN AND MADE SOME
21 HIGHLIGHTING, SO PLEASE DISREGARD THAT. I DON'T KNOW HOW TO
22 CLEAR IT. I AM GOING TO LEARN HOW TO DO THAT BETTER.

23 I'M JUST SHOWING THIS TO YOU SO YOU CAN SEE THERE ARE TEN
24 PHONE FIELDS.

25 NOW, THERE IS GOING TO BE EVIDENCE IN THIS CASE AND

OPENING STATEMENT - BURSAR

1 THERE'S ALSO A STIPULATED FACT THAT WHEN RASH CURTIS OBTAINS A
2 PHONE NUMBER ON A DEBT THAT'S REFERRED TO IT, IT PUTS THOSE
3 PHONE NUMBERS INTO PHONE FIELDS ONE THROUGH FOUR.

4 THERE IS ALSO GOING TO BE TESTIMONY, AND IT IS A
5 STIPULATED FACT IN YOUR BINDER, THAT WHEN RASH CURTIS OBTAINS
6 A PHONE NUMBER FROM SKIP-TRACING, THAT PHONE NUMBER GOES IN
7 PHONE FIELDS FIVE THROUGH TEN.

8 AND YOU CAN SEE SOME OF THE FIELDS FOR SOME OF THE RECORDS
9 ARE EMPTY. SO, FOR SOME THEY HAVE SKIP-TRACE NUMBERS AND FOR
10 SOME THEY DON'T. FOR SOME THEY HAVE NUMBERS PROVIDED BY THE
11 CLIENT REFERRING THE DEBT AND FOR SOME THEY DON'T.

12 SO THE FIRST THING MR. WEIR DID WAS HE LIMITED HIS SEARCH
13 TO JUST THE PHONE NUMBERS APPEARING IN FIELDS FIVE THROUGH TEN
14 THAT DO NOT ALSO APPEAR IN ANY OTHER FIELD BECAUSE HE WANTED
15 TO GET JUST THE SKIP-TRACE NUMBERS AND THAT IS JUST A DATABASE
16 OPERATION THAT HE DID WITH SOME SOPHISTICATED DATABASE
17 SOFTWARE. YOU CAN'T DO IT IN MICROSOFT EXCEL. I KNOW A LOT
18 OF PEOPLE HERE HAVE SEEN EXCEL. BUT WHEN A FILE IS TOO BIG,
19 YOU CAN'T USE EXCEL FOR VERY LARGE FILES THAT HAVE 7 MILLION
20 RECORDS. SO MR. WEIR USED A PROGRAM NAMED STATA AND HE MAY
21 HAVE USED SOME OTHER HIGH-END DATABASE SOFTWARE PRODUCTS IN
22 ORDER TO DO THIS.

23 THE FIRST THING HE DID WAS HE LIMITED THE LIST TO THE
24 PHONE NUMBERS THAT APPEARED ONLY IN FIELDS FIVE THROUGH TEN
25 AND IN NO OTHER SOURCE.

OPENING STATEMENT - BURSOR

1 ALL RIGHT. NOW, THE SECOND CRITERIA FOR CLASS MEMBERS IN
2 THIS CASE IS THAT THEY HAVE TO HAVE BEEN CALLED EITHER USING
3 AN AUTO DIALER OR WITH A PRERECORDED MESSAGE. IN OTHER WORDS,
4 NOT A MANUALLY DIALED CALL. SO, MR. WEIR MADE SURE THAT EVERY
5 PHONE NUMBER ON HIS LIST WAS CALLED WITH AN AUTO DIALER
6 BECAUSE EVERY NUMBER HE HAD CAME FROM A CALL LOG FOR AN AUTO
7 DIALER.

8 NOW, THIS IS EXHIBIT 57B. THIS IS AN EXCERPT FROM THE
9 GLOBAL CONNECT -- FROM THE CALL LOG FOR THE GLOBAL CONNECT
10 AUTO DIALER. THERE WERE TENS OF MILLIONS OF PHONE CALLS ON
11 THIS CALL LOG, AND THIS IS JUST, JUST A LIST OF 21 OF THEM
12 THAT I'M JUST SHOWING YOU SO THAT YOU CAN SEE WHAT THE RECORDS
13 LOOK LIKE.

14 SO THE CALL LOG FOR THE AUTO DIALERS SHOW THE DATE EVERY
15 PHONE CALL WAS MADE. THEY SHOW THE NAME ON THE DEBTOR
16 ACCOUNT, FIRST NAME, LAST NAME. THEY SHOW THE PHONE NUMBER
17 THAT WAS CALLED. THEY HAVE CODES IN COLUMN F. YOU CAN SEE
18 THERE ARE CODES WHETHER THE CALL WAS ANSWERED, WHETHER IT WAS
19 ANSWERED BY A MACHINE, AND THE COLUMN ON THE RIGHT, COLUMN G,
20 SHOWS THE DURATION OF EACH PHONE CALL IN SIX-SECOND
21 INCREMENTS.

22 WE HAVE A CASE ABOUT COUNTING PHONE CALLS AND THE WAY WE
23 ARE GOING TO PROVE HOW MANY PHONE CALLS WERE MADE IS WITH THE
24 AUTO DIALER CALL LOGS. WE KNOW EXACTLY HOW MANY PHONE CALLS
25 WERE MADE. THIS IS HOW WE ARE GOING TO PROVE IT.

OPENING STATEMENT - BURSOR

1 SO THE SECOND CRITERIA FOR OUR CLASS LIST IS THAT THE CALL
2 HAS TO HAVE BEEN MADE BY AN AUTO DIALER OR WITH A PRERECORDED
3 MESSAGE BUT EVERY, EVERY PHONE CALL ON THE LIST CAME FROM AN
4 AUTO DIALER CALL LOG. WE WILL PROVE THAT AND MR. WEIR IS
5 GOING TO TESTIFY TO THAT. THAT'S WHERE HE GOT THE PHONE
6 NUMBERS FROM, THOSE CALL LOGS.

7 SO, MR. WEIR DID THESE TWO THINGS. HE LIMITED THE LIST TO
8 JUST THE NUMBERS OBTAINED BY SKIP-TRACING IN PHONE FIELDS FIVE
9 THROUGH TEN AND JUST THE AUTO DIALER CALLS. HE MADE THOSE
10 LISTS. THERE WERE A LITTLE OVER 14 MILLION PHONE CALLS ON
11 THOSE LISTS.

12 AND THEN HE GAVE THOSE LISTS TO MS. VERKOVSKAYA, WHO IS
13 THE SECOND EXPERT THAT DID WORK FOR US ON THIS CASE. AND THE
14 REASON HE GAVE THE LIST TO MS. VERKOVSKAYA WAS SO THAT SHE
15 COULD DETERMINE WHICH TELEPHONE NUMBERS WERE CELLPHONES AND
16 SHE COULD ALSO DETERMINE WHICH TELEPHONE NUMBERS BELONGED TO
17 NON-DEBTORS.

18 AND THE WAY THAT SHE DID THAT WAS FIRST SHE HAD THE PHONE
19 NUMBER. THIS IS THE SAME CALL LOG WE JUST LOOKED AT FROM THE
20 GLOBAL CONNECT DIALER. YOU CAN SEE THE PHONE NUMBERS IN
21 COLUMN E.

22 MS. VERKOVSKAYA TOOK THOSE PHONE NUMBERS AND COMPARED THEM
23 TO A DATABASE, A DATABASE THAT IS MAINTAINED BY A COMPANY
24 CALLED IMS. IT IS A DATABASE OF ALL PHONE NUMBERS IN THE
25 UNITED STATES. IT'S -- WHEN YOU DIAL A PHONE NUMBER, YOUR

OPENING STATEMENT - BURSOR

1 PHONE CALL GOES THROUGH THIS DATABASE SO THAT THE PHONE SYSTEM
2 KNOWS WHICH COMPANY TO CONNECT IT TO. IT KNOWS IF YOUR PHONE
3 NUMBER IS AFFILIATED WITH VERIZON OR AT&T OR SOME OTHER
4 CARRIER. THAT IS HOW PHONE CALLS GET CONNECTED. THERE IS A
5 DATABASE THAT SAYS WHAT PHONE NUMBER BELONGS TO WHAT DEVICE ON
6 WHAT NETWORK.

7 SO MS. VERKOVSKAYA TOOK THE 14 MILLION PHONE NUMBERS THAT
8 MR. WEIR GAVE HER AND CHECKED THEM AGAINST THE IMS DATABASE TO
9 NARROW THE LIST DOWN TO ONLY CELLPHONES AND EXCLUDE THE
10 LANDLINES.

11 THE SECOND THING MS. VERKOVSKAYA DID WAS, YOU CAN SEE ON
12 THE CALL LOG THERE'S A NAME ON THE DEBTOR'S ACCOUNT, COLUMN B
13 IS FIRST NAME, COLUMN C IS LAST NAME.

14 SHE COMPARED THE NAME ON THE DEBTOR ACCOUNT TO THE NAME OF
15 THE REGISTERED OR CUSTOMARY USER OF THE CELLPHONE TO SEE IF IT
16 MATCHED. IF IT MATCHED, THEN THAT WAS A PERSON WHO WAS A
17 DEBTOR ON THE ACCOUNT AT RASH CURTIS AND THEY WERE EXCLUDED.
18 IF IT DID NOT MATCH, THEN THEY WERE LIKE MR. PEREZ, NO-DEBTORS
19 WHO HAD NO ACCOUNT WITH RASH CURTIS, WHO WERE CALLED WHEN THEY
20 SHOULD NOT HAVE BEEN CALLED.

21 SO, THE LAST TWO CRITERIA, MS. VERKOVSKAYA CONFIRMED THAT
22 EVERY PHONE NUMBER ON THE CLASS LIST WAS A CELLPHONE BY
23 CROSS-REFERENCING IT WITH THE IMS DATABASE FILES, AND SHE'S
24 GOING TO COME IN AND EXPLAIN THAT, AND SHE CONFIRMED THAT THE
25 PHONE NUMBERS BELONGED TO NON-DEBTORS BY COMPARING THE NAME,

OPENING STATEMENT - BURSOR

1 THE DEBTOR NAME ON THE RASH CURTIS ACCOUNT WITH THE HISTORICAL
2 CUSTOMARY USER OF THE PHONE NUMBER AS REPORTED TO TWO DATABASE
3 COMPANIES, ONE IS CALLED LEXIS NEXIS AND THE OTHER ONE IS
4 CALLED TRANSUNION. MS. VERKOVSKAYA IS GOING TO COME IN AND
5 EXPLAIN HOW SHE DID THAT.

6 SO, THIS PROCESS NARROWED DOWN THE 79 MILLION PHONE CALLS
7 TO JUST THE CALLS TO CLASS MEMBERS THAT WERE OBTAINED BY
8 SKIP-TRACING USING AN AUTO DIALER TO A CELLPHONE TO SOMEONE
9 WHO HAD NO ACCOUNT AT RASH CURTIS AND RASH CURTIS HAD NO
10 BUSINESS CALLING. THAT'S OUR LIST. AS I SAID, THERE ARE --
11 WE WILL PROVE THERE ARE 40,420 OF THOSE PEOPLE THAT ARE IN THE
12 CLASS THAT WE WERE APPOINTED TO REPRESENT.

13 NOW, MS. VERKOVSKAYA GAVE THE DATA BACK TO MR. WEIR AND
14 MR. WEIR REPORTED IT IN TABLE 4 OF HIS REPORT. I WOULD VERY
15 MUCH LIKE TO CLEAR THIS SCREEN.

16 **THE CLERK:** I CLEARED. THE CORNER SAYS CLEAR AND YOU
17 HIT THE GLASS.

18 **THE COURT:** BOTTOM LEFT.

19 **MR. BURSOR:** BOTTOM LEFT. GOT IT.

20 SO WE DID THAT FOUR-STEP PROCESS THROUGH MR. WEIR AND
21 MS. VERKOVSKAYA AND THEY -- AND MR. WEIR REPORTED THE RESULTS.
22 NOW, I TOLD YOU THERE IS THREE AUTO DIALERS IN THE CASE THAT
23 RASH CURTIS USED. THE FIRST ONE IS GLOBAL CONNECT AND
24 MR. WEIR COUNTED HOW MANY PHONE CALLS THE DEFENDANTS MADE TO
25 SKIP-TRACED NUMBERS WITH THE GLOBAL CONNECT DIALER AND THE

OPENING STATEMENT - BURSOR

1 COUNT WAS 501,043. MR. WEIR -- NOT JUST CALLS, CALLS THAT
2 WERE PLACED ANSWERED AND AT LEAST SIX SECONDS IN DURATION. IF
3 THE CALL WAS PLACED AND WAS NOT ANSWERED, IT WAS EXCLUDED FROM
4 THE LIST. MR. WEIR DID THE SAME THING FOR THE TCN DIALER AND
5 HE FOUND THAT THERE WERE 31,064 PHONE CALLS THAT THE DEFENDANT
6 PLACED TO NON-DEBTORS TO NUMBERS OBTAINED BY SKIP-TRACING TO
7 THEIR CELLPHONES WITH THE TCN AUTO DIALER.

8 AND WITH RESPECT TO THE VIC DIALER, MR. WEIR DETERMINED
9 THAT THERE WERE -- SO THESE THREE YOU HAVE TO ADD TOGETHER AND
10 THE COPY OF THE SLIDE THAT I HAVE DOESN'T HAVE MY NOTES ON IT
11 BUT I BELIEVE IT IS 1,679 PLUS 237 PLUS 675. IF I REMEMBER
12 CORRECTLY, THAT ADS UP TO 2,591 BUT I'M GOING TO CHECK THE
13 MATH ON THAT. I AM GOING TO SHOW YOU THIS SLIDE MANY, MANY
14 TIMES -- THIS TABLE 4 -- MANY, MANY TIMES DURING THE TRIAL.
15 THAT IS WHAT THIS TRIAL IS ABOUT.

16 AND IT'S A LITTLE BIT -- IT'S A LITTLE BIT DIFFERENT FOR
17 ME, BECAUSE ORDINARILY AS THE PLAINTIFFS' LAWYER, I STAND UP
18 DURING THE OPENING STATEMENT AND I SAY I'M GOING TO ASK YOU
19 FOR MONEY. BUT I'M NOT GOING TO DO THAT HERE. I'M NOT GOING
20 TO ASK YOU FOR MONEY. I'M GOING TO ASK YOU TO COUNT THE PHONE
21 CALLS. THERE IS GOING TO BE A VERDICT FORM THAT IS GOING TO
22 REQUIRE YOU TO COUNT THE PHONE CALLS. AND WE ARE GOING TO
23 PRESENT THIS COUNT TO YOU AND WE'RE GOING TO ASK YOU TO WRITE
24 CERTAIN OF THESE NUMBERS ONTO THE VERDICT FORM.

25 AND I EXPECT THAT THE DEFENDANT WILL DISPUTE THIS COUNT

OPENING STATEMENT - ELLIS

1 BUT THEY DON'T HAVE A DIFFERENT COUNT. SO I BELIEVE THIS
2 COUNT IS GOING TO BE THE ONLY ONE YOU'RE GOING TO SEE DURING
3 THE TRIAL. SO WE WILL PROVE THAT THE PHONE CALLS LISTED ON
4 TABLE 4 ARE THE PHONE CALLS THE DEFENDANT MADE. WE WILL PROVE
5 EVERY ONE OF THEM WAS MADE TO A SKIP-TRACED CELLPHONE NUMBER
6 OF A NON-DEBTOR, TO OTHER CLASS MEMBER. AFTER WE PROVE THAT,
7 WE ARE GOING TO REST AND ASK YOU FOR A VERDICT THAT CONFIRMS
8 OUR COUNT.

9 THANK YOU.

10 **THE COURT:** MR. ELLIS.

11 **MR. ELLIS:** THANK YOU, YOUR HONOR.

12 **THE CLERK:** SO, DEFENSE, YOU WILL HAVE YOUR --

13 **MR. VALENTI:** PLEASE.

14 **THE CLERK:** OKAY.

15 **OPENING STATEMENT**

16 **MR. ELLIS:** IT IS, IT IS NOW AFTERNOON SO I WILL SAY
17 GOOD AFTERNOON.

18 SO AS I SAID IN VOIR DIRE, I GET TO GO SECOND. AND I
19 THINK SUFFICE IT TO SAY WE ARE HERE BECAUSE THERE IS A DISPUTE
20 IN THE EVIDENCE. OKAY?

21 SO NOW I'M GOING TO RUN THROUGH REALLY QUICKLY WHAT I
22 THINK THE EVIDENCE IS GOING TO SHOW, BUT I DO WANT TO GO BACK
23 AND SAY THERE IS... THERE IS ONE THING THAT MR. BURSAR SAID
24 THAT I AGREE ABOUT.

25 THIS CASE IS REALLY GOING TO ALMOST BREAK DOWN INTO TWO

OPENING STATEMENT - ELLIS

1 CASES. THERE'S GOING TO BE SOME FACTS ABOUT MR. PEREZ, WHO IS
2 SITTING HERE AT THE TABLE, AND HOW MANY PHONE CALLS CAME IN TO
3 HIM OR DIDN'T COME IN, AND THEN WE ARE GOING TO HAVE ALMOST
4 REALLY SOMETHING COMPLETELY DIFFERENT WITH RESPECT TO THE
5 CLASS, AND HOW MANY PHONE CALLS WENT TO THE CLASS AND HOW AND
6 WHY. ALL RIGHT?

7 SO WITHOUT FURTHER ADO, LADIES AND GENTLEMEN, LET ME RIP
8 INTO MY OPENING STATEMENT.

9 AGAIN, I REPRESENT -- NEXT SLIDE?

10 (DISPLAYED ON SCREEN.)

11 SO, AGAIN, THIS IS WHAT I BELIEVE THE EVIDENCE IS GOING TO
12 SHOW. SO I'VE TRIED MORE THAN A HUNDRED CASES, AND THE ONE
13 THING I CAN SAY TO YOU FOLKS IS THAT AT THE BEGINNING WHAT I
14 THOUGHT THE EVIDENCE -- WHAT THE EVIDENCE WAS GOING TO SHOW IS
15 NEVER EXACTLY THE SAME FOR EITHER SIDE. AS IT TURNS OUT,
16 THINGS HAPPEN DURING TRIAL. BUT THIS IS WHAT WE BELIEVE THE
17 EVIDENCE IS GOING TO SHOW.

18 SO RASH CURTIS & ASSOCIATES. THEY ARE A DEBT COLLECTION
19 AGENCY. AND THEY SPECIALIZE IN COLLECTING ON MEDICAL DEBT.
20 SO THE DEBT GETS SENT TO THEM FROM HOSPITALS, AND DOCTOR'S
21 OFFICES, DENTAL OFFICES, SO FORTH AND SO. YOU CAN SEE THAT IT
22 HAS ITS PRINCIPAL PLACE OF BUSINESS THERE IN VACAVILLE,
23 CALIFORNIA. AND IT HAS ABOUT 60 EMPLOYEES, AND IT HAS 30 OR
24 40 COLLECTORS, NOT ALL OF WHICH ARE ON THE FLOOR AT THE SAME
25 TIME. AND AS I SAID, IT COLLECTS MOSTLY DEBT FOR HEALTHCARE

1 PROVIDERS.

2 AND SO WHEN AN ACCOUNT GETS ASSIGNED TO RASH CURTIS, THE
3 INFORMATION IT RECEIVES TYPICALLY COMES FROM THE HEALTHCARE
4 PROVIDERS THEMSELVES. AND SO --

5 LET'S GO ON TO THE NEXT SLIDE.

6 (DISPLAYED ON SCREEN.)

7 SO WHAT IT TYPICALLY GETS WITH AN ASSIGNMENT IS SO-CALLED
8 DEMOGRAPHIC INFORMATION. OKAY? SO WHAT THAT MEANS IS THAT IT
9 GETS PHONE NUMBERS, IT GETS ADDRESSES, PLACES OF EMPLOYMENT,
10 AND ALL OF THIS IS TYPICALLY DELIVERED TO RASH CURTIS
11 ELECTRONICALLY, COMES OVER IN COMPRESSED FILES, AND THEN IT IS
12 DOWNLOADED INTO RASH CURTIS' SOFTWARE OF VARIOUS TYPES.

13 IT'S GOT COLLECTION SOFTWARE THAT IS PROPRIETARY THAT'S
14 MADE -- ONE OF THINGS ABOUT THIS TRIAL, BY THE WAY, LADIES AND
15 GENTLEMEN, IN TERMS OF GOING INTO A TRIAL, YOU ARE GOING TO
16 LEARN LOTS OF INFORMATION ABOUT A FIELD THAT YOU PROBABLY
17 DIDN'T KNOW ANYTHING ABOUT. I HOPE YOU FIND IT INTERESTING.

18 BUT -- SO THIS INFORMATION COMES IN FROM THE HEALTHCARE
19 PROVIDERS, HOSPITALS, AND SO FORTH. AND WHY DOES IT GET THAT
20 INFORMATION? WELL, IT NEEDS TO HAVE A GOOD ADDRESS, A GOOD
21 PHONE NUMBER, TO REACH OUT AND CONTACT THE DEBTOR, AND BEGIN
22 THE PROCESS OF ATTEMPTING TO COLLECT THE DEBT.

23 ONE OF THE FACTS THAT IS NOT ON THE SLIDE, BUT THAT YOU
24 WILL HEAR IS THAT IS TYPICALLY THE HARDEST THING FOR A
25 COLLECTION AGENCY TO DO IS TO ACTUALLY CONNECT WITH THE DEBTOR

1 AND THEN BEGIN THE PROCESS OF TRYING TO GET IT PAID OR INTO A
2 PAYMENT PLAN, OR SOMETHING LIKE THAT. AND THAT'S ONE OF THE
3 REASONS WHY THERE ARE SO MANY PHONE CALLS THAT GET MADE.

4 THAT'S BECAUSE MOST OF THEM NEVER CONNECT. NEVER CONNECT.

5 SO WHERE DOES THIS INFORMATION COME FROM? THE HEALTHCARE
6 PROVIDERS THAT RASH CURTIS GETS. WELL, IT COMES FROM -- THINK
7 ABOUT GOING TO THE DENTIST. YOU GO IN, THERE'S AN ADMISSION
8 FORM. THERE'S A, YOU KNOW, AGREEMENT TO PAY. YOU KNOW, IT
9 MAY SAY WE WILL BILL YOUR INSURANCE, BUT BLAH, BLAH, BLAH.
10 DOWN AT THE BOTTOM IT SAYS, GIVE US THE CONTACT INFORMATION,
11 GIVE US YOUR BEST ADDRESS.

12 THAT'S WHERE THE INFORMATION COMES FROM. AND IT COMES
13 WITH THAT ORIGINAL ASSIGNMENT ELECTRONICALLY INTO RASH CURTIS
14 AND IT BEGINS TO AUTO POPULATE IN THE COLLECTION SOFTWARE.
15 UNDERSTAND? MAKE SENSE? OKAY.

16 SO IN DOING THIS, YOU CAN SEE THIS LAST BULLET PART --
17 BULLET POINT IS THAT RASH, YOU KNOW, THESE ARE ALL PART OF ITS
18 EFFORTS TO COLLECT A DEBT. AND, AGAIN, MOST OF THESE -- AND
19 THIS WILL HAVE SOME INTERESTING -- YOU'LL SEE WITH RESPECT TO
20 THE FACTS AS THEY COME IN, WITH RESPECT TO MR. PEREZ, IN TERMS
21 OF THE ACTUAL COMMUNICATIONS WITH HIM.

22 NEXT SLIDE.

23 (DISPLAYED ON SCREEN.)

24 SO THIS CASE, AS MR. BURSAR SAID THOUGH, REALLY COMES DOWN
25 TO THAT -- REMEMBER HE GAVE YOU FOUR THINGS THAT HE SAID THAT

1 HE WAS GOING TO PROVE? I TOOK THE NOTES. BUT THE VERY FIRST
2 THING THAT HE SAID THAT HIS EXPERTS WERE GOING TO SHOW WAS
3 THAT THE NUMBERS THAT RASH CURTIS CALLED WERE OBTAINED THROUGH
4 SKIP-TRACING. OKAY?

5 HERE IS WHAT SKIP-TRACING IS. SKIP-TRACING IS A SOFTWARE
6 THAT IS SOLD BY VARIOUS VENDORS THAT ARE ANCILLARY WITH THE
7 DEBT COLLECTION INDUSTRY. SO LEXIS NEXIS MAY HAVE IT. THERE
8 MAY BE EXPERIAN, WHICH IS -- TYPICALLY ACTS AS A DEBT REPORTER
9 AS TO... AS TO YOUR CREDIT SCORE.

10 BUT YOU CAN SEE WHAT THEY -- WHAT SKIP-TRACING IS FOR
11 RIGHT HERE. THIS IS WHAT OUR EVIDENCE IS GOING TO PROVE.
12 THEY DON'T JUST SKIP-TRACE FOR TELEPHONE NUMBERS. OKAY? THEY
13 DON'T. THEY SKIP-TRACE FOR CURRENT ADDRESSES, PLACES OF
14 EMPLOYMENT, WORK NUMBERS, FAX NUMBERS, ADDITIONAL ADDRESSES,
15 SPOUSE SOMETIMES.

16 AGAIN, WHY DO THEY TRY TO GATHER ALL THIS INFORMATION?
17 BECAUSE THEY WANT TO MAKE A CONNECTION WITH THE DEBTOR SO THEY
18 CAN BEGIN THE COLLECTION PROCESS.

19 AND SO YOU CAN SEE HERE, THEY ALSO GO IN AND THEY FIND
20 THINGS LIKE THIS. HAVE YOU FILED FOR BANKRUPTCY? BECAUSE IF
21 YOU ARE IN BANKRUPTCY, A COLLECTION AGENCY CAN'T COLLECT
22 AGAINST YOU. IT'S AGAINST THE LAW.

23 THEY LOOK FOR THE EMPLOYMENT. THEY SOMETIMES LOOK FOR
24 ASSET INFORMATION TO SEE IF YOU'VE GOT CREDIT CARDS, YOU KNOW,
25 AND THINGS LIKE THAT.

1 SO RASH CURTIS, TO SUM UP, USES THE SKIP-TRACING TO OBTAIN
2 INFORMATION PERTINENT TO HELPING IT WITH ITS COLLECTIONS.

3 (DISPLAYED ON SCREEN.)

4 NOW, IN RASH CURTIS, IT MAINTAINS A DATABASE WHICH
5 CONTAINS ALL THE DEBTOR INFORMATION OF DEBTORS THAT HAVE BEEN
6 DENT TO IT TO BE COLLECTED AGAINST. YOU CAN SEE, THIS IS
7 WHAT'S KNOWN AS BEYOND. SO BEYOND IS A CUSTOM MADE SOFTWARE
8 PLATFORM WHICH IS MANUFACTURED BY A COMPANY NAMED DAKCS, WHICH
9 IS BACK EAST, WHICH CREATES THE SOFTWARE PRODUCTS.

10 NOW, THIS IS WHERE MR. BURSOR AND I AGREE. SO BEYOND HAS
11 TEN PHONE FIELDS IN IT. AND THESE ARE USED FOR STORING PHONE
12 NUMBERS ASSOCIATED WITH A DEBTOR ACCOUNT AT RASH CURTIS. AND
13 SO THE -- THESE PHONE FIELDS BREAK DOWN INTO -- MR. BURSOR AND
14 I AGREE ON THIS -- INTO TWO SECTIONS. THERE IS ONE THROUGH
15 FOUR, AND THEN THERE IS FIVE THROUGH TEN. ONE THROUGH FOUR
16 ARE THE NUMBERS THAT COME IN FROM RASH'S CREDITOR CLIENTS.
17 YOU UNDERSTAND WHAT I'M SAYING?

18 SO THESE HAVEN'T BEEN -- WHEN IT OBTAINS THESE NUMBERS,
19 THEY HAVEN'T BEEN SKIP-TRACED. THEY ARE GETTING THEM FROM
20 THEIR CREDITOR CLIENTS. AND THEY PUT THOSE INTO FIELDS ONE
21 THROUGH FOUR, OKAY? AND THESE ARE TYPICALLY CELLPHONE
22 NUMBERS. THEY COULD BE LAND LINES, BUT TYPICALLY THEY ARE
23 CELLPHONE NUMBERS. ARE YOU WITH ME SO FAR?

24 NOW, THEY START CALLING THOSE NUMBERS. RIGHT? BUT MAYBE
25 THE NUMBER HAS BEEN CHANGED. MAYBE IT'S NO LONGER GOOD. AND

1 SO THEY WILL GO OUT AND THEY WILL BEGIN TO SKIP-TRACE.

2 NEXT SLIDE.

3 (DISPLAYED ON SCREEN.)

4 SO THIS IS A KEY SLIDE. AND THE COURT -- THE COURT SAID,
5 YOU KNOW, IF YOU WANT TO TAKE NOTES, YOU CAN. IF YOU DON'T
6 WANT TO TAKE NOTES, DON'T. BUT IF THERE'S EVER A TIME TO TAKE
7 SOME NOTES, THIS IS -- BECAUSE IT IS REALLY IMPORTANT TO
8 UNDERSTAND THIS FOR THE REST OF THE CASE.

9 IT IS RASH CURTIS' POLICY AND PROCEDURE TO PLACE ONLY
10 CELLPHONE NUMBERS IN PHONE FIELDS THAT THEY HAVE -- LET ME GO
11 BACK.

12 IT'S RASH CURTIS' POLICY AND PROCEDURE TO TAKE THE
13 CELLPHONE NUMBERS THAT THEY HAVE OBTAINED BY THEIR CLIENTS WHO
14 HAVE -- WHO IN TURN HAVE OBTAINED THOSE WITH THE CONSENT OF
15 THE DEBTORS, THE PATIENTS, AND PUT THOSE IN PHONE FIELDS ONE
16 THROUGH FOUR. OKAY?

17 THOSE NUMBERS, CELLPHONE NUMBERS THAT THEY HAVE OBTAINED
18 FROM THEIR CLIENTS, RASH THEN LOADS INTO ITS AUTO DIALERS AND
19 CALLS THOSE NUMBERS WITH AUTO DIALERS. WHY? BECAUSE THEY
20 HAVE GOT THE CONSENT OF THE PATIENT AS PROVIDED THROUGH THE
21 CREDITOR CLIENT TO DO SO. OKAY?

22 NOW, RASH CURTIS' POLICY AND PROCEDURE IS TO PLACE PHONE
23 NUMBERS THAT THEY HAVE GOTTEN FROM OTHER PLACES, EVEN FROM --
24 EVEN FROM THE PATIENTS THEMSELVES THAT DON'T FIT INTO ONE
25 THROUGH FOUR, PHONE FIELDS ONE THROUGH FOUR; THEY PLACE THOSE

1 IN PHONE FIELDS FIVE THROUGH TEN.

2 NOW, THIS IS WHERE I THINK THE EVIDENCE IS GOING TO PART
3 WAYS AND WHERE I -- WHERE OUR CASE PARTS WAYS WITH THE
4 PLAINTIFFS' CASE. BECAUSE PLAINTIFFS' POSITION AND EVIDENCE
5 THROUGH THEIR EXPERTS, WHO I WILL COME BACK TO AND TALK ABOUT
6 AT THE VERY END, THEIR EXPERTS CLAIM THAT EVERY ONE OF THOSE
7 501 AND SOME THOUSAND PHONE CALLS WERE SKIP-TRACED.

8 AND I'M GOING TO TELL YOU WRITE RIGHT NOW I DO NOT BELIEVE
9 THAT IS WHAT THE EVIDENCE IS GOING TO SHOW.

10 YOU'VE HEARD FROM ME DURING VOIR DIRE ABOUT BURDEN OF
11 PROOF. YOU'VE HEARD FROM THE COURT, SHE READ AN INSTRUCTION
12 ON BURDEN OF PROOF. IT IS THE PLAINTIFFS' BURDEN OF PROOF TO
13 DEMONSTRATE TO YOU THAT THOSE NUMBERS THAT WERE CALLED BY RASH
14 CURTIS WERE OBTAINED BY RASH CURTIS THROUGH SKIP-TRACING. AND
15 I'M GOING TO TELL YOU I DO NOT BELIEVE AT THE END OF THE DAY
16 THE EVIDENCE IS GOING TO SHOW THAT.

17 NOW, I WILL SAY THIS, AND LOOK AT THE FIRST BULLET POINT.
18 NUMBERS THAT WERE OBTAINED BY SKIP-TRACING WERE PUT IN PHONE
19 FIELDS FIVE THROUGH TEN, BUT NOT ALL PHONE NUMBERS IN PHONE
20 FIELDS FIVE THROUGH TEN ARE SKIP-TRACED. DO YOU UNDERSTAND MY
21 POINT THERE?

22 SO WHO KNOWS HOW MANY SKIP-TRACED NUMBERS ARE IN THERE?
23 I'M GOING TO TELL YOU THAT I DON'T THINK THAT MR. SNYDER, OR
24 MR. WEIR, OR MS. VERKOVSKAYA IS GOING TO BE ABLE TO TELL YOU.

25 AND, LADIES AND GENTLEMEN, IT IS PLAINTIFFS' BURDEN TO

1 PROVE THAT EVERY SINGLE NUMBER, AND YOU JUST HEARD IT, THAT
2 WAS PUT IN THOSE PHONE FIELDS WAS SKIP-TRACED. IT'S NOT MY
3 BURDEN. I DON'T HAVE TO PUT ON A PIECE OF EVIDENCE IF
4 PLAINTIFF HASN'T MET THEIR BURDEN.

5 SO THE NUMBERS IN PHONE FIELDS FIVE THROUGH TEN UNDER RASH
6 CURTIS' POLICIES AND PROCEDURES SHOULD BE DIALED MANUALLY.
7 WHY? BECAUSE THE NUMBERS THAT GO INTO THOSE FIELDS WE DON'T
8 NECESSARILY HAVE CONSENT TO CALL THOSE NUMBERS.

9 (DISPLAYED ON SCREEN.)

10 THIS IS ANOTHER KEY PIECE OF EVIDENCE THAT I THINK THAT
11 I'M GOING TO PROVE ON THIS SLIDE RIGHT IN FRONT OF YOU.

12 THAT IS, THE PHONE NUMBERS PLACED BY RASH CURTIS IN PHONE
13 FIELDS FIVE THROUGH TEN ARE OBTAINED BY A VARIETY OF SOURCES,
14 AND FROM A VARIETY OF SOURCES. SO WHAT'S THE FLIP SIDE OF
15 THAT COIN? MEANS ONLY ONE OF THE SOURCES OUT OF MANY MAY BE
16 SKIP-TRACING.

17 (DISPLAYED ON SCREEN.)

18 AS PART OF ITS TCPA COMPLIANCE, IN THE COURSE OF
19 COLLECTING DEBTS, RASH CURTIS CALLED CONSUMERS WHOSE NUMBERS
20 WERE IN PHONE FIELDS ONE THROUGH FOUR, THAT IS, NUMBERS THAT
21 HAD BEEN GIVEN TO ITS CREDITOR CLIENTS WITH CONSENT AND IN
22 TURN PASSED ON TO RASH CURTIS, THOSE WERE THE ONLY NUMBERS,
23 ACCORDING TO THE POLICY, THAT WERE SUPPOSED TO BE CALLED WITH
24 AN AUTOMATIC DIALER.

25 SO PROGRESSIVE OR AUTOMATIC DIALER IS A TYPE OF TELEPHONE

1 EQUIPMENT WHICH AUTOMATICALLY INITIATES PHONE CALLS. THERE I
2 GO WITH MY DENTAL SURGERY. I APOLOGIZE. AY-AY-AY.

3 THE GLOBAL CONNECT DIALER IS NO LONGER USED AT RASH
4 CURTIS. THAT FACT PROBABLY DOESN'T MAKE ANY IMPRESSION ON YOU
5 AT ALL. BY THE END OF THE CASE WHEN I COME BACK AND SAY THAT
6 THAT'S WHAT THE EVIDENCE SHOWED, IT WILL MAKE A DIFFERENCE.

7 NEXT SLIDE.

8 (DISPLAYED ON SCREEN.)

9 THE VIC DIALER. AS MR. BURSAR SAID, THERE WERE THREE
10 DIALING PLATFORMS USED AT RASH. THERE WAS THE VIC DIALER.
11 THAT'S THE EARLIEST ONE AND PROBABLY THE -- FOR YOU FOLKS THAT
12 ARE SO TECHNOLOGICALLY SAVVY, IT IS PROBABLY THE MOST
13 PRIMITIVE DIALER. AND IT WAS USED IN 2012, I THINK, THROUGH
14 2013, MAYBE EARLY INTO 2014. IT'S NO LONGER USED BY RASH
15 CURTIS ALSO. NOT BECAUSE THE EQUIPMENT IS INHERENTLY EVIL,
16 AND -- OR ANYTHING LIKE THAT, BUT IT JUST GOT TOO OLD.

17 AND, AGAIN, WHILE THIS FACT MAY NOT MAKE ANY IMPRESSION ON
18 YOU RIGHT NOW, REMEMBER IT IF YOU CAN BECAUSE AT THE END OF
19 THE CASE THE FACT THAT THE VIC DIALER IS NO LONGER IN USE IS
20 GOING TO BE IMPORTANT.

21 NEXT SLIDE.

22 (DISPLAYED ON SCREEN.)

23 AND NOW THE LAST DIALER THAT RASH USES AND THIS -- IT USED
24 IT IN 2016, 2017, IS THIS SO-CALLED TCN DIALER. JUST ANOTHER
25 DIALING PLATFORM.

OPENING STATEMENT - ELLIS

1 CAN YOU GO BACK FOR A SECOND, ANTHONY?

2 (DISPLAYED ON SCREEN.)

3 AGAIN, THIS IS GOING TO BE IMPORTANT. LET ME GIVE YOU
4 WHAT I THINK THE EVIDENCE IS GOING TO SHOW. I THINK THE
5 EVIDENCE IS GOING TO SHOW THAT MR. PEREZ, WHEN HE WAS
6 ATTEMPTED TO BE CONTACTED THIS 26 TIMES THAT MR. BURSOR
7 ALLUDED TO, THAT WAS ONLY WITH THE GLOBAL CONNECT DIALER. IT
8 WASN'T WITH THE VIC DIALER AND IT WASN'T WITH THE TCN DIALER.
9 I BELIEVE AT THE END OF THE CASE THAT'S GOING TO BE IMPORTANT.

10 (DISPLAYED ON SCREEN.)

11 SO LET'S TALK ABOUT MR. PEREZ SPECIFICALLY. RASH CURTIS'
12 CALL LOGS INDICATE THAT IT ATTEMPTED 26 PHONE CALLS TO THE
13 CELLPHONE NUMBER IN 5193, THAT ENDED IN 5193. AGAIN, YOU CAN
14 SEE NONE OF THESE CALLS WERE PLACED WITH THE VIC OR TCN
15 DIALERS.

16 YOU CAN SEE I'M NOT TRYING TO HIDE THE ATTEMPTS, RIGHT?
17 THERE WERE 26 ATTEMPTS. NOW HERE'S WHAT YOU'RE GOING TO BE
18 ASKED TO EVALUATE. HOW MANY OF THOSE ATTEMPTS ACTUALLY LED
19 THIS GLOBAL CONNECT DIALER AT RASH CURTIS TO REACH OUT AND
20 ACTUALLY CONNECT WITH MR. -- WITH THE PLAINTIFFS' PHONE
21 SYSTEM? LET ME GO BACK AND SAY THAT BECAUSE THAT WASN'T THE
22 GREATEST THING I EVER STATEMENT THAT I EVER MADE.

23 SO THE IDEA -- WHAT YOU HEARD WAS THAT MR. BURSOR SAID
24 THERE WAS A -- THAT FIRST PHONE CALL, REMEMBER HIM SAYING
25 THAT, IN MAY OF 2015, AND HE SAYS WE REACHED OUT AND TALKED

1 WITH MR. PEREZ.

2 I WANT YOU TO EVALUATE THAT FROM THE RECORDS THAT YOU'RE
3 GOING TO SEE AND FROM THE TESTIMONY THAT YOU'RE GOING TO SEE.
4 AND I -- ONE OF THE THINGS AT THE END OF THE CASE, AS
5 MR. BURSOR SAID, IS THAT YOU'RE GOING TO BE ASKED TO LIKE
6 TALLY UP THE NUMBERS. YOU'RE GOING TO TALLY UP THE ACTUAL
7 PHONE CALLS THAT CONNECTED WITH MR. PEREZ, AND THEN SEPARATELY
8 YOU'RE GOING TO BE ASKED TO FIGURE OUT OF THESE 540,000 PHONE
9 CALLS, ONE, SOME, ANY OF THOSE ACTUALLY GO THROUGH, GET
10 CONNECTED, AND WE'LL TALK ABOUT THE EVALUATION OF THE EXPERTS'
11 TESTIMONY IN A SECOND, BUT YOU'RE GOING TO HAVE TO REALLY,
12 REALLY SCRUTINIZE THE THREE EXPERTS FOR PLAINTIFF'S TESTIMONY.

13 HERE IS WHAT I THINK THE EVIDENCE IS GOING TO SHOW.

14 THE FIRST 25 PHONE CALLS ATTEMPTED BY RASH CURTIS WENT
15 UNANSWERED. WHY DID THEY KEEP CALLING? BECAUSE RASH CURTIS
16 HAS NOTHING BETTER TO DO THAN TO ANNOY PEOPLE? NO. THEY WERE
17 TRYING TO GET HOLD OF MR. PEREZ. AND HERE'S WHAT I BELIEVE
18 THE EVIDENCE IS GOING TO SHOW. THE FIRST TIME HE ACTUALLY
19 PICKED UP THE PHONE AND SPOKE WITH THEM WAS ON JUNE 7TH, 2016.

20 (DISPLAYED ON SCREEN.)

21 DURING THAT PHONE CALL PEREZ -- MR. PEREZ TOLD RASH CURTIS
22 HE WAS NOT THE DEBTOR THEY WERE LOOKING FOR. AFTER TALKING TO
23 MR. PEREZ, PURSUANT TO COMPANY POLICY, THEY TOOK THE 5193
24 NUMBER OUT OF THE DIALER. THEY TOOK IT OUT SO IT COULDN'T BE
25 CALLED AGAIN.

1 AND THE TESTIMONY AND THE EVIDENCE WILL BE UNDISPUTED THAT
2 THEY NEVER DARKENED HIS DOORWAY AGAIN ONCE THEY FINALLY
3 CONNECTED WITH HIM AND THEY TOLD -- THEY WERE TOLD THAT HE WAS
4 NOT THE PERSON THEY WERE LOOKING FOR.

5 SO, HERE ARE THE TWO KEY ISSUES.

6 (DISPLAYED ON SCREEN.)

7 IN THE SMALL CASE, THE PEREZ CASE, WHETHER MR. PEREZ'S
8 CELLPHONE NUMBER ENDING IN 5193 WAS OBTAINED BY SKIP-TRACING.
9 BECAUSE REMEMBER WHAT MR. BURSOR SAID TO YOU? THAT'S THE
10 FIRST CRITICAL QUESTION IN THE FOUR QUESTIONS THAT HE SAID
11 THAT YOU'RE GOING TO LOOK AT.

12 THEY LOSE ON THAT ONE. THAT PART IS OVER.

13 (DISPLAYED ON SCREEN.)

14 SECOND KEY ISSUE IS WHETHER THERE IS GOING TO BE EVIDENCE,
15 CREDIBLE, RELIABLE, DEPENDABLE EVIDENCE THAT DEMONSTRATES THAT
16 ANY ONE -- ANY ONE OF THE CLASS MEMBERS CAN SHOW THAT RASH
17 CURTIS OBTAINED THEIR TELEPHONE NUMBER BY SKIP-TRACING AND
18 CALLED IT.

19 WHY IS THAT IMPORTANT? BECAUSE IT'S THE FIRST ELEMENT OF
20 THEIR CASE. AND IF THEY CAN'T PROVE IT TO YOU, IT FALLS, THE
21 CASE FALLS.

22 (DISPLAYED ON SCREEN.)

23 SO HERE ARE THE WITNESSES THAT YOU'RE GOING TO HEAR. SO
24 BOB KEITH YOU'VE HEARD ABOUT HIM -- HE INTRODUCED HIMSELF IN
25 THE COURTROOM. HE'S SITTING AT COUNSEL TABLE BY THE SCREEN.

OPENING STATEMENT - ELLIS

1 BOB, CAN YOU STAND UP?

2 SO HE'S THE VICE PRESIDENT OF OPERATIONS AT RASH CURTIS.

3 CHRIS PAFF IS ALSO AN EXECUTIVE VICE PRESIDENT OF
4 OPERATIONS AT RASH CURTIS, AND HE'LL COME IN.

5 NICK KEITH IS THE INFORMATION TECHNOLOGY, THE IT GUY
6 THERE, AND HE WILL TALK TO YOU ABOUT RASH CURTIS' POLICIES AND
7 PROCEDURES AND SKIP-TRACING.

8 AND SO WILL DAN CORREA SINCE HE IS THE MANAGER OF THE
9 COLLECTION FLOOR. HE'S THE COLLECTION MANAGER.

10 STEVE KIZER IS AN EX-EMPLOYEE OF RASH CURTIS. HE IS NO
11 FAN OF RASH CURTIS. BUT I BELIEVE YOU WILL GET VALUABLE
12 INFORMATION FROM HIM. HOPEFULLY HE WILL SHOW UP.

13 MR. PEREZ WILL BE ON THE STAND TOMORROW AS I UNDERSTAND
14 IT, AND YOU WILL HEAR FROM MR. BURSOR. HE WILL ELICIT
15 TESTIMONY, AND THEN YOU WILL SEE ME CROSS-EXAMINE MR. PEREZ.

16 NOW, THE LAST THREE WITNESSES, WHICH ARE REALLY THE HEART
17 OF THE CASE, THESE ARE THE EXPERTS FOR PLAINTIFF.

18 LADIES AND GENTLEMEN, I BELIEVE THE EVIDENCE IS GOING TO
19 SHOW THIS; THEY ARE PROFESSIONAL EXPERTS. THE EVIDENCE WILL
20 SHOW SIMPLY IN THIS CASE, BETWEEN THE THREE OF THEM, THEY
21 HAVE -- HAD BILLED THROUGH THE END OF 2018 MORE THAN \$150,000.
22 AND YOU WILL BE ASKED TO EVALUATE THE CREDIBILITY AND
23 RELIABILITY OF THESE EXPERTS, BUT YOU WILL SEE THAT AT LEAST
24 TWO OF THEM ARE REPEATED PLAYERS ON BEHALF OF THIS LAW FIRM.

25 SO, \$70,000 FOR -- FOR EXAMPLE, MR. WEIR, WAS PAID THROUGH

OPENING STATEMENT - ELLIS

1 THE END OF 2018. I DON'T KNOW HOW MANY OTHER CASES THE
2 EVIDENCE WILL SHOW -- WE'LL FIND OUT OVER THE COURSE OF THE
3 NEXT TWO OR THREE DAYS, WE'LL FIND OUT -- AND YOU WILL SEE AN
4 EMAIL THAT WILL -- THAT WILL COME IN, JUST AS MR. BURSOR SAID
5 THERE ARE CERTAIN EXHIBITS THAT WILL COME IN, THERE'S AN EMAIL
6 FROM ONE OF THE EXPERTS SAYING, WHY DIDN'T YOU INVITE ME TO
7 YOUR CHRISTMAS PARTY? I'VE MADE YOU ENOUGH MONEY THIS YEAR,
8 OR WORDS TO THAT EFFECT.

9 ONE OF THE THINGS THAT SOMETIMES JURORS WHO ARE NOT
10 TECHNOLOGICALLY SAVVY -- AND LET ME JUST SAY I AM NOT
11 TECHNOLOGICALLY SAVVY, BUT THEY SOMETIMES DEFER OR DON'T WANT
12 TO SECOND-GUESS EXPERTS WHO TELL YOU THAT THERE WERE 541,000
13 PEOPLE THAT WERE SKIP-TRACED, OR THAT THEY WERE ALL
14 NON-DEBTORS, OR SO FORTH AND SO ON, OR THAT THERE WERE
15 MESSAGES LEFT BECAUSE THE TIME PERIOD IS MORE THAN SIX SECONDS
16 ON THE PHONE BILLS.

17 YOU WILL NEED TO LOOK AT THAT OVER THE COURSE OF THE NEXT
18 FOUR OR FIVE DAYS VERY, VERY CAREFULLY TO SEE WHETHER OR NOT
19 YOU BELIEVE THAT EVIDENCE IS CREDIBLE. BECAUSE YOU, AS THE
20 COURT SAID, ARE THE SOLE JUDGES OF THE CREDIBILITY AND THE
21 FACTS.

22 (DISPLAYED ON SCREEN.)

23 SO, THIS REALLY SIMPLY REPEATS. THIS JUST GIVES YOU SOME
24 SPECIFIC INFORMATION HERE. YOU CAN SEE WHEN THE LAWSUIT WAS
25 FILED. YOU CAN SEE WHEN MR. PEREZ WAS APPOINTED CLASS REP.

1 YOU CAN SEE, AS MR. BURSAR SAID, HIS LAW FIRM WAS APPOINTED AS
2 CLASS COUNSEL.

3 THEN WE GET BACK TO THE \$64,000 QUESTION IN THIS CASE,
4 WHICH IS, EACH OF THE CERTIFIED CLASSES REQUIRES, AS A
5 PRECONDITION TO MEMBERSHIP, THAT THE CLASS MEMBER'S PHONE
6 NUMBER WHICH WAS CALLED BY RASH CURTIS WAS OBTAINED BY RASH
7 CURTIS THROUGH SKIP-TRACING AS OPPOSED TO ONE OF THE OTHER
8 MYRIAD SOURCES THAT IT OBTAINS PHONE NUMBERS, AND PUT IN PHONE
9 FIELDS FIVE THROUGH TEN.

10 THANK YOU, ALL. I KNOW IT'S BEEN -- IT HAS ONLY BEEN HALF
11 A DAY. I KNOW IT HAS BEEN A LONG AND EXHAUSTING DAY TO PICK
12 THE JURY. I WON'T HAVE A CHANCE TO TALK WITH YOU FOLKS AGAIN
13 DIRECTLY UNTIL THE END OF THE CASE, WHETHER IT'S FRIDAY
14 AFTERNOON OR MONDAY, HOWEVER IT TURNS OUT, BUT I HOPE YOU DO
15 ENJOY IT.

16 I THANK YOU FOR YOUR ATTENTION. REMEMBER, AS I GO AND SIT
17 DOWN, THAT EVERY TIME PLAINTIFF PUTS A WITNESS ON THE STAND, I
18 WILL HAVE A CHANCE TO CROSS-EXAMINE THAT PERSON SO WAIT UNTIL
19 YOU HEAR ALL THE EVIDENCE BEFORE YOU MAKE A DECISION. AND
20 REMEMBER THE SCALES OF JUSTICE.

21 AND HAVE A NICE DAY.

22 **THE COURT:** ALL RIGHT. THANK YOU, MR. ELLIS.

23 OKAY. LET'S -- IF YOU WILL DO A COUPLE OF THINGS BEFORE I
24 LET YOU GO FOR THE DAY.

25 SO GO AHEAD AND GRAB YOUR BINDER. AND BEHIND THE

1 TELEPHONE REMINDERS THERE IS A CALENDAR. I THINK THAT YOU
2 WILL PROBABLY, AT THE LATEST, GET THE CASE FOR DELIBERATIONS
3 BY MONDAY. SO YOU SEE WHERE IT SAYS "DELIBERATIONS TO PROCEED
4 ALL DAY"? THAT'S REALLY PROBABLY STARTING ON TUESDAY. YOU
5 WILL PROBABLY BE DELIBERATING BY TUESDAY. ALL RIGHT? JUST
6 FOR PLANNING PURPOSES.

7 SO THAT'S ONE THING.

8 THE NEXT IS I AM GOING TO GO AHEAD, NOW THAT WE'VE HAD THE
9 OPENING STATEMENTS, AND READ TO YOU WHAT ARE THE STIPULATED
10 FACTS. BELIEVE IT OR NOT, THIS IS JUST GOING TO MAKE
11 EVERYTHING GO FASTER, WHICH IS WHY I'M GOING TO READ THEM TO
12 YOU. I UNDERSTAND THAT IT CAN BE TAXING, WHICH IS WHY YOU
13 HAVE THEM IN YOUR BINDER SO YOU CAN FOLLOW ALONG. YOU DON'T
14 HAVE TO TAKE NOTES, BUT THE FOLLOWING FACTS ARE DEEMED TO BE
15 PROVED, AND THEY ARE AS FOLLOWS:

16 1. PLAINTIFF PEREZ FILED A CLASS ACTION COMPLAINT ON
17 JUNE 17TH, 2016.

18 2. THE COURT APPOINTED PLAINTIFF PEREZ AS THE CLASS
19 REPRESENTATIVE OF THE CERTIFIED CLASSES IN THIS CASE ON
20 SEPTEMBER 6, 2017.

21 3. THE COURT APPOINTED BURSOR & FISHER AS CLASS COUNSEL
22 TO REPRESENT THE CERTIFIED CLASSES IN THIS CASE ON
23 SEPTEMBER 6, 2017.

24 4. DEFENDANT RASH CURTIS & ASSOCIATES IS A NATIONWIDE
25 DEBT COLLECTION AGENCY SPECIALIZING IN THE COLLECTION OF

1 HEALTHCARE DEBT.

2 5. RASH CURTIS' PRINCIPAL PLACE OF BUSINESS IS VACAVILLE,
3 CALIFORNIA.

4 6. RASH CURTIS OBTAINS DEBTOR ACCOUNTS FROM HEALTHCARE
5 PROVIDERS FOR THE PURPOSE OF COLLECTING DEBTS AND MAY INCLUDE
6 ONE OR MORE TELEPHONE NUMBERS.

7 7. AS PART OF ITS EFFORTS TO COLLECT DEBT, RASH CURTIS
8 REGULARLY CALLS DEBTORS AND OTHER PEOPLE RELATED TO THEM.

9 8. EACH OF THE CERTIFIED CLASSES REQUIRES, AS A
10 PRECONDITION TO MEMBERSHIP, THAT THE CLASS MEMBERS' TELEPHONE
11 NUMBERS CALLED BY RASH CURTIS WERE OBTAINED THROUGH
12 SKIP-TRACING.

13 9. SKIP-TRACING IS A METHOD OF OBTAINING DEMOGRAPHIC
14 INFORMATION ABOUT INDIVIDUALS. SKIP-TRACING IS USED FOR A
15 NUMBER OF PURPOSES INCLUDING OBTAINING CONTACT INFORMATION
16 SUCH AS HOME TELEPHONE NUMBERS, CURRENT HOME ADDRESSES, LAST
17 KNOWN ADDRESSES, PLACES OF EMPLOYMENT, WORK PHONE NUMBERS, FAX
18 NUMBERS, SPOUSE PHONE NUMBERS, CELLULAR OR LAND LINE, FAMILY
19 MEMBER PHONE NUMBERS, ADDITIONAL ADDRESSES OR PHONE NUMBERS
20 SUCH AS NEIGHBORS OR FRIENDS, ASSETS, CREDIT SCORES, AND
21 SEARCHING FOR BANKRUPTCY FILINGS. SKIP-TRACING MAY BE
22 PERFORMED VIA DATA ANALYSIS OF PERSONAL INFORMATION OBTAINED
23 FROM A VARIETY OF PUBLIC AND PRIVATE DATABASES. THROUGH
24 SKIP-TRACING, A COMPANY LIKE RASH CURTIS MAY OBTAIN NEW
25 TELEPHONE NUMBERS, ADDRESSES, AND/OR EMPLOYMENT OR ASSET

1 INFORMATION ON A DEBTOR OR THIRD PARTIES.

2 10. RASH CURTIS USES SKIP-TRACING TO OBTAIN VARIOUS
3 INFORMATION ABOUT DEBTORS SUCH AS TELEPHONE NUMBERS FOR THE
4 FILES IT RECEIVES WHEN IT DOES NOT CONTAIN TELEPHONE NUMBERS
5 FOR DEBTORS, ADDITIONAL TELEPHONE NUMBERS FOR ACCOUNTS IT
6 RECEIVES THAT DO NOT CONTAIN TELEPHONE NUMBERS, EMPLOYMENT
7 INFORMATION AND, AMONG OTHER THINGS, LOCATION INFORMATION.
8 RASH CURTIS MAY ALSO USE SKIP-TRACING TO OBTAIN OTHER
9 INFORMATION PERTINENT TO ITS COLLECTION ACTIVITY.

10 11. RASH CURTIS STORES THE TELEPHONE NUMBERS IT OBTAINS
11 FROM SKIP-TRACING IN CERTAIN AREAS OF ITS COLLECTION DATABASE.

12 12. RASH CURTIS MAINTAINS A DATABASE CONTAINING ALL OF
13 ITS COLLECTION ACCOUNTS. EACH ACCOUNT RECOVERED -- I'M SORRY.
14 EACH ACCOUNT RECORD HAS TEN TELEPHONE NUMBER FIELDS USED FOR
15 STORING PHONE NUMBERS ASSOCIATED WITH THE ACCOUNT.

16 13. IT IS RASH CURTIS' POLICY AND PROCEDURE TO PLACE
17 TELEPHONE NUMBERS THAT IT RECEIVES FROM ITS CREDITOR CLIENTS
18 IN PHONE FIELDS ONE THROUGH FOUR.

19 14. IT IS RASH CURTIS' POLICY AND PROCEDURE TO PLACE THE
20 TELEPHONE NUMBERS THAT IT OBTAINS FROM SKIP-TRACING IN PHONE
21 FIELDS FIVE THROUGH TEN.

22 15. IN THE COURSE OF COLLECTING DEBTS, RASH CURTIS
23 REGULARLY CALLS CONSUMERS USING GLOBAL CONNECT, A PROGRESSIVE
24 DIALER.

25 16. A PROGRESSIVE DIALER IS A TYPE OF AUTOMATIC TELEPHONE

1 DIALER WHEREBY THE EQUIPMENT INITIATES OUTBOUND TELEPHONE
2 CALLS BY PROGRESSIVELY DIALING THROUGH A STORED LIST OF
3 TELEPHONE NUMBERS.

4 17. AT THE TIME RASH CURTIS WAS USING GLOBAL CONNECT,
5 GLOBAL CONNECT COULD MAKE TEN SIMULTANEOUS CALLS PER EACH OF
6 RASH CURTIS' AVAILABLE DEBT COLLECTION AGENTS.

7 18. GLOBAL CONNECT COULD MAKE THOUSANDS OF CALLS WITHIN
8 MINUTES.

9 19. THE GLOBAL CONNECT DIALER ALLOWS FOR CALLING
10 TELEPHONES USING A PRERECORDED VOICE.

11 20. RASH CURTIS' EMPLOYEES WOULD LOAD LISTS OF NUMBERS
12 FOR GLOBAL CONNECT TO CALL PRIOR TO THE GLOBAL CONNECT PLACING
13 CALLS.

14 21. RASH CURTIS' GLOBAL CONNECT DIALER IS AN AUTOMATIC
15 TELEPHONE DIALING SYSTEM UNDER THE TCPA. THAT'S TITLE 47 OF
16 THE UNITED STATES CODE, AT SECTION 227(A)(1).

17 22. IN THE COURSE OF COLLECTING DEBTS, RASH CURTIS
18 REGULARLY CALLED CONSUMERS USING VIC, A PREDICTIVE DIALER, OR
19 VIC.

20 A PREDICTIVE DIALER IS A TYPE OF AUTOMATIC TELEPHONE
21 DIALER THAT PROVIDES THE CAPABILITY TO PREDICT THE
22 AVAILABILITY OF CALLS CENTER AGENTS THAT CAN RESPOND TO THE
23 OUTBOUND CALLS THAT HAVE BEEN DIALED BY THE PREDICTIVE DIALING
24 SYSTEM AND ANSWERED BY THE CALLED PARTY. THE VIC DIALER
25 UTILIZES DEBT COLLECTION BUSINESS SOFTWARE SOLD BY A COMPANY

1 CALLED DAKCS.

2 AT THE TIME RASH CURTIS WAS USING VIC, VIC COULD MAKE A
3 MINIMUM OF THREE SIMULTANEOUS CALLS FOR EACH OF RASH CURTIS'
4 AVAILABLE DEBT COLLECTION AGENTS.

5 THE VIC DIALER ALLOWS FOR CALLING TELEPHONES USING A
6 PRERECORDED VOICE.

7 RASH CURTIS' --

8 27. RASH CURTIS' EMPLOYEES WOULD LOAD LISTS OF NUMBERS
9 FOR VIC TO CALL PRIOR TO VIC PLACING CALLS.

10 28. THE COURT HAS ALREADY DETERMINED THAT RASH CURTIS'
11 VIC DIALER IS AN AUTOMATIC TELEPHONE DIALING SYSTEM UNDER THE
12 TCPA, TITLE 47, U.S. CODE, SECTION 227(A) (1) .

13 29. IN THE COURSE OF COLLECTING DEBTS, RASH CURTIS
14 REGULARLY CALLS CONSUMERS USING TCN, A PREDICTIVE DIALER.

15 TCN CAN MAKE TEN SIMULTANEOUS CALLS PER EACH OF RASH
16 CURTIS' AVAILABLE DEBT COLLECTION AGENTS.

17 31. RASH CURTIS' EMPLOYEES LOAD LISTS OF NUMBERS FOR TCN
18 TO CALL PRIOR TO TCN PLACING CALLS.

19 32. RASH CURTIS' TCN DIALER IS AN AUTOMATIC TELEPHONE
20 DIALING SYSTEM UNDER THE TCPA SECTION 47 -- TITLE 47, U.S.
21 CODE, SECTION 227(A) (1) .

22 33. RASH CURTIS' CALL LOGS SHOW THAT IT MADE 26 CALLS TO
23 PLAINTIFF PEREZ'S CELLPHONE, ALL OF WHICH WERE PLACED THROUGH
24 ITS DIALING SYSTEM GLOBAL CONNECT AND NONE OF WHICH WERE
25 PLACED THROUGH THE VIC OR TCN DIALER. THE CALLS WERE PLACED

1 ON THE FOLLOWING DATES: (1) JUNE 3RD, 2015, (2) FEBRUARY 24,
2 2016, (3) MARCH 2, 2016, (4) MARCH 9TH, 2016, (5) MARCH 15TH,
3 2016, (6) MARCH 28TH, 2016, (7) APRIL 5TH, 2016, (8) APRIL 6,
4 2016, (9) APRIL 13TH, 2016, (10) APRIL 18TH, 2016, (11)
5 APRIL 20TH, 2016, (12), APRIL 22ND, 2016, (13), APRIL 25TH,
6 2016, (14) APRIL 27TH, 2016, (15) MAY 12TH, 2016, (16)
7 MAY 16TH, 2016, (17) MAY 20TH, 2016, (18) MAY 24TH, 2016, (19)
8 MAY 25TH, 2016, (20) MAY 26TH, 2016, (21), MAY 27TH, 2016,
9 (22) MAY 22ND (SIC), 2016, (23) MAY 31ST, 2016, (24) JUNE 1ST,
10 2016, (25) JUNE 3RD, 2016, AND (26) JUNE 7TH, 2016.

11 34. RASH CURTIS' CALL LOGS SHOW THAT IT MADE 14 CALLS TO
12 PLAINTIFF PEREZ WHERE THE CALL LASTED SIX SECONDS OR LONGER
13 INDICATING POSSIBLE USE OF AN ARTIFICIAL OR PRERECORDED VOICE.

14 NO. 35. RASH CURTIS HAS NEVER HAD AN ACCOUNT IN PLAINTIFF
15 PEREZ'S NAME.

16 36. PLAINTIFF PEREZ TOLD RASH CURTIS TO STOP CALLING HIS
17 CELLPHONE ON JUNE 7TH, 2016.

18 37. RASH CURTIS LACKED PRIOR EXPRESS CONSENT TO CALL
19 PLAINTIFF PEREZ.

20 THOSE FACTS ARE DEEMED PROVED.

21 I'M GOING TO RELEASE YOU TO GO INTO THE JURY ROOM AT WHICH
22 POINT MY COURTROOM DEPUTY WILL GIVE YOU YOUR JURY BADGE,
23 SHE'LL GIVE YOU BASIC INFORMATION ABOUT HOW TO GET INTO THE
24 JURY ROOM AT THE BEGINNING OF EACH DAY. AND WE WILL TAKE YOUR
25 CELLPHONE NUMBERS.

1 SHE'LL ALSO GIVE YOU A TELEPHONE NUMBER THAT YOU CAN GIVE
2 TO YOUR FAMILY IN THE EVENT OF AN EMERGENCY. WE ARE CONNECTED
3 ELECTRONICALLY, MY COURTROOM DEPUTY AND I. SO THE PHONE
4 NUMBERS SHE GIVES YOU IS A PHONE NUMBER THAT IS PICKED UP
5 WHILE WE ARE IN SESSION. IF THERE IS AN EMERGENCY, I CAN
6 ASSURE YOU THAT SOMEONE WILL PICK UP THE PHONE, LET FRANCES
7 KNOW WHO WILL LET ME KNOW, AND I WILL STOP THE PROCEEDINGS.
8 SO I DON'T WANT YOU TO WORRY ABOUT THAT. SO THAT YOU KNOW,
9 THAT IF THERE IS AN EMERGENCY, WE WILL GET THAT INFORMATION TO
10 YOU. OKAY?

11 NOW, A REMINDER TO PLEASE KEEP AN OPEN MIND THROUGHOUT THE
12 TRIAL. DO NOT DECIDE WHAT THE VERDICT SHOULD BE UNTIL I'VE
13 SENT IT TO YOU FOR DELIBERATIONS.

14 A REMINDER THAT YOU CAN ONLY DECIDE THE CASE ON THE
15 EVIDENCE THAT'S HERE IN THE COURTROOM.

16 YOU ARE INSTRUCTED THAT YOU MAY NOT COMMUNICATE WITH
17 ANYONE IN ANY WAY AND DO NOT LET ANYONE COMMUNICATE WITH YOU
18 IN ANY WAY ABOUT THE MERITS OF THIS CASE OR ANYTHING TO DO
19 WITH IT. THIS INCLUDES DISCUSSING THE CASE IN PERSON, IN
20 WRITING, BY PHONE, OR ELECTRONIC MEANS, VIA EMAIL, TEXT
21 MESSAGING, OR ANY INTERNET CHAT ROOM, BLOG, WEBSITE OR
22 APPLICATION INCLUDING BUT NOT LIMITED TO FACEBOOK, YOUTUBE,
23 TWITTER, INSTAGRAM, LINKEDIN, SNAPCHAT, OR SOME OTHER SOCIAL
24 MEDIA FORM. I SHOULD UPDATE MY LIST. THEY ARE CHANGING ALL
25 THE TIME. EVERYTHING APPLIES. YOU CANNOT USE IT.

1 THIS APPLIES TO COMMUNICATING WITH YOUR FELLOW JURORS
2 UNTIL I GIVE YOU THE CASE FOR DELIBERATION. IT APPLIES TO
3 COMMUNICATING WITH EVERYONE ELSE, INCLUDING FAMILY MEMBERS,
4 EMPLOYERS, THE MEDIA, THE PRESS, ANYBODY INVOLVED IN THE
5 TRIAL. YOU CAN NOTIFY YOUR FAMILY AND EMPLOYER THAT YOU HAVE
6 BEEN SEATED AS A JUROR IN THIS CASE AND HOW LONG IT'S EXPECTED
7 TO PROCEED.

8 BUT IF YOU ARE ASKED OR APPROACHED IN ANY WAY ABOUT YOUR
9 SERVICE OR ANYTHING TO DO WITH THIS CASE, YOU MUST TELL THEM
10 THAT YOU HAVE BEEN ORDERED NOT TO RESPOND, AND PLEASE REPORT
11 THAT CONTACT TO ME SO THAT I CAN INVESTIGATE.

12 BECAUSE YOU WILL RECEIVE ALL THE EVIDENCE AND LEGAL
13 INSTRUCTION THAT YOU MAY CONSIDER TO RETURN A VERDICT, DO NOT
14 READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA ACCOUNTS OR
15 COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH IT. DO NOT
16 DO ANY RESEARCH. DO NOT GO FIGURE OUT ANYTHING ABOUT THESE
17 DIALERS. DO NOT FIGURE OUT ANYTHING ABOUT THE TCPA. DO NOT
18 CONSULT DICTIONARIES. DO NOT SEARCH THE INTERNET OR USE ANY
19 OTHER REFERENCE MATERIALS. DO NOT MAKE ANY INVESTIGATION.

20 IF YOU GET A PHONE CALL ON YOUR PHONE, DO NOT COUNT HOW
21 MANY SECONDS. OKAY? DO NOT DO ANY OF THAT.

22 DO NOT RESEARCH THE LAW, OR THE PEOPLE, OR THE WITNESSES,
23 OR THE LAWYERS. YOU CAN DO ALL OF THAT WHEN YOU ARE EXCUSED
24 BUT YOU CANNOT DO IT NOW.

25 REALLY, THE REASON THAT I HAVE ALL THESE RULES IS BECAUSE

1 IT'S CRITICALLY IMPORTANT THAT EACH SIDE GET A FAIR TRIAL AND
2 YOU ALL SEE THE EXACT SAME EVIDENCE AND CONSIDER THE EXACT
3 SAME THINGS WHEN YOU GO BACK THERE TO DECIDE THE CASE.

4 SO ALL OF THESE RULES ARE HERE TO MAKE SURE THAT THESE
5 FOLKS GET A FAIR TRIAL. AND ANY JUROR WHO VIOLATES THESE
6 RULES REALLY DOES JEOPARDIZE THE FAIRNESS OF ALL OF THESE
7 PROCEEDINGS AND A MISTRIAL COULD RESULT. SO WE DON'T WANT
8 THAT TO HAPPEN.

9 THAT SAID, SOMETIMES THINGS HAPPEN INADVERTENTLY. IF
10 SOMETHING HAPPENS, JUST LET ME KNOW AND THAT WAY I CAN MAKE
11 SURE THAT IT'S OKAY. ALL RIGHT? THAT'S MY JOB. SO DON'T BE
12 AFRAID TO SAY IF SOMETHING HAPPENS.

13 DOES ANYBODY HAVE ANY QUESTIONS BEFORE YOU GO BACK?

14 YES, SIR.

15 **JUROR:** 8:30 IS WHEN WE ARE TO BE --

16 **THE COURT:** WE WILL CALL YOU IN RIGHT AT 8:30. SO
17 YOU CAN -- DEPENDING ON WHEN YOU GET HERE, THE COURTHOUSE
18 OPENS EARLY. YOU CAN GO SIT IN THE JURY ROOM IF YOU GET HERE
19 EARLY. THEY WILL SHOW YOU THE DOOR TO USE. AND THAT DOOR IS
20 OPEN TO YOU AT 8:00 A.M.

21 SO I HAVE LAW CLERKS, AND THEY WILL BUZZ YOU IN. BUT I
22 KIND OF WORK MY LAW CLERKS PRETTY HARD. THEY WORK LATE INTO
23 THE NIGHT. SO 8:00 O'CLOCK IS WHEN THEY HAVE TO BE HERE. IF
24 YOU BUZZ BEFORE THEN, SOMEONE MAY NOT BE HERE. AT
25 8:00 O'CLOCK, YOU CAN BUZZ AND THEY WILL LET YOU IN.

1 OTHER QUESTIONS? NO? OKAY.

2 WE'LL SEE YOU TOMORROW. THANK YOU.

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

4 **THE COURT:** OKAY. WE ARE BACK ON THE RECORD. THE
5 RECORD WILL REFLECT THE JURY HAS LEFT THE COURTROOM. THERE
6 ARE JUST A COUPLE OF THINGS I WANT TO TIE UP LOOSE ENDS BEFORE
7 YOU LEAVE FOR THE DAY.

8 ONE IS, AS YOU KNOW, YOU'VE GOT YOUR 11 HOURS LESS
9 OPENINGS AND CLOSINGS. DOES ANYBODY -- YOU ARE GOING TO GET
10 DAILY TIME SHEETS. DOES ANYBODY WANT ME TO RESERVE TIME FOR
11 YOUR CLOSINGS SO YOU DON'T RUN OUT AT THE END?

12 IF YOU'VE GOT A GOOD HANDLE ON IT, THAT'S FINE. I DO
13 OFFER THAT SO PEOPLE DON'T GET -- PLAINTIFF, ANY?

14 **MR. BURSOR:** YEAH. I WOULD LIKE TO RESERVE AN HOUR
15 FOR CLOSING.

16 **THE COURT:** DEFENSE?

17 **MR. ELLIS:** AND FOR ME, YOUR HONOR, 45 MINUTES.

18 **THE COURT:** OKAY.

19 THE OTHER THING WAS, MR. ELLIS, YOU WERE GOING TO TELL ME
20 WHETHER YOU WERE ASKING FOR EXTRA TIME ON THE ISSUES OF... THE
21 BIFURCATED ISSUES WITH RESPECT TO --

22 **MR. ELLIS:** WITH RESPECT TO THE TREBLE DAMAGES.

23 **THE COURT:** RIGHT.

24 **MR. ELLIS:** I THINK WHERE WE LEFT IT IS YOU WERE
25 INDICATING THAT YOU THOUGHT WHEN THE JURY WAS OUT WE COULD --

1 **THE COURT:** THAT IS WHERE I LEFT IT. BUT THE
2 QUESTION IS HOW MUCH TIME, IF ANY -- PLAINTIFFS' PERSPECTIVE
3 IS THEY ARE ABLE TO PUT THAT EVIDENCE ON WITHIN THEIR
4 FRAMEWORK OF 11 HOURS. YOU WANTED TIME TO THINK ABOUT IT.
5 YOU'VE BEEN GIVEN TIME, SO --

6 **MR. ELLIS:** I WOULD LIKE AN EXTRA HALF AN HOUR.

7 **THE COURT:** ALL RIGHT.

8 OKAY. IT'S IN MY STANDING ORDER. I KNOW EVERYBODY HAS
9 BEEN BUSY. MR. BURSOR, YOU NEED TO COME IN AND FIGURE OUT HOW
10 TO USE THAT SCREEN. THERE ARE DIRECTIONS THERE. THEY ARE
11 INTERACTIVE. FIGURE OUT HOW TO DO IT. OKAY?

12 **MR. BURSOR:** YES.

13 **THE COURT:** OKAY. TONIGHT I'LL LOOK AT THE VERDICT
14 FORM. WE CAN TALK ABOUT THAT TOMORROW.

15 DOES ANYBODY ELSE WANT TO TALK ABOUT ANYTHING OR PUT
16 ANYTHING ON THE RECORD?

17 **MR. BURSOR:** WELL, YOUR HONOR, THERE IS THE ISSUE OF
18 OUR -- THE THREE WITNESSES THAT WE INTEND TO PRESENT BY VIDEO
19 TOMORROW. I DON'T KNOW HOW OR WHEN THAT'S --

20 **THE COURT:** I HAVE TO TELL YOU THE RULE SAYS -- YOU
21 HAVE A LOT OF LAWYERS SITTING AT THAT TABLE.

22 THE RULE PROVIDES THAT YOU CAN ONLY USE DEPOSITION
23 TESTIMONY UNDER RULE 32 IN CERTAIN SITUATIONS. AND 32(A)(3),
24 IN TERMS OF A PARTY OPPONENT, DEFINES WHAT A PARTY OPPONENT
25 IS, AND THEY HAVE TO BE UNAVAILABLE.

1 SO YOU HAVE TO FOLLOW THE RULES UNLESS YOU HAVE SOME
2 EVIDENTIARY BASIS FOR SAYING THAT YOU CAN GET IT IN IN SOME
3 OTHER FORM.

4 **MR. BURSOR:** SO MY UNDERSTANDING WAS ANY OBJECTION TO
5 THE USE OF THOSE VIDEOS WAS WAIVED WHEN IT WAS NOT MADE. IF
6 THERE WAS AN OBJECTION, THESE VIDEOS CAN'T BE PLAYED BECAUSE
7 THE WITNESS IS AVAILABLE OR THE WITNESS ISN'T AN AGENT, THAT
8 SHOULD HAVE BEEN DEALT WITH IN JANUARY AND FEBRUARY WHEN WE
9 WERE EXCHANGING THE PRETRIAL MATERIALS.

10 THE DEFENDANTS HAVE KNOWN SINCE, I THINK, JANUARY THAT WE
11 HAVE THESE THREE WITNESSES BY VIDEO. THAT'S WHY WE DESIGNATED
12 THE TESTIMONY. THEY WERE REQUIRED TO MAKE OBJECTIONS BY A
13 CERTAIN DATE. THEY HAD NO OBJECTIONS. IF THE OBJECTION WAS
14 RULE 32(A), YOU DON'T MEET THOSE CRITERIA, THE OBJECTION
15 SHOULD HAVE BEEN MADE. IT WAS NOT, AND WHEN IT WAS WAIVED, WE
16 RELIED ON THAT AND EXPECTED THAT WE WERE GOING TO BE ABLE TO
17 PRESENT THE TESTIMONY BY VIDEO.

18 **THE COURT:** RESPONSE.

19 **MR. ELLIS:** SO NO RULE 32 WAIVER.

20 WHAT I WAS ASKED TO DO IS DID I AGREE WITH THE CLIPS
21 COMING IN. YES, I AGREED WITH THE CLIPS COMING IN. BUT THERE
22 WAS A REPRESENTATION IN THE PRETRIAL STATEMENT -- I DON'T
23 HAVE -- I PROBABLY DO HAVE THE ECF NUMBER, THAT THESE PEOPLE
24 WERE GOING TO COME IN AND TESTIFY. THESE WERE GOING TO BE THE
25 WITNESSES.

1 AND THERE WERE 9 OR 11 OF THEM. THAT REPRESENTATION, AS I
2 UNDERSTAND IT FROM MY EXPERIENCE IN FEDERAL COURT AND FROM
3 CASE LAW THAT I'VE SEEN, IS A REPRESENTATION THAT THOSE PEOPLE
4 ARE GOING TO SHOW UP. AND IF THEY ARE NOT GOING TO SHOW UP
5 AND IT'S ONLY GOING TO BE BY VIDEO, THEN THAT SHOULD HAVE BEEN
6 MADE CLEAR TO EVERYBODY. I DON'T THINK IT WAS MADE CLEAR TO
7 COURT. IT CERTAINLY WASN'T MADE CLEAR TO ME.

8 FOR THE FIRST TIME I GOT SOME KIND OF IDEA DURING OUR
9 CONFERENCE CALL ON FRIDAY WHEN YOU ASKED WAS MR. KIZER GOING
10 TO TESTIFY, AND THERE WAS A PAUSE ON THE OTHER LINE.

11 NOW, WITH RESPECT TO MR. KIZER, I DID GO AHEAD AND
12 SUBPOENA HIM FOR FRIDAY. SO HE'S GOING TO SHOW UP. AND AT
13 THAT POINT IN TIME IF THEY WANT TO PUT VIDEO CLIPS IN, THAT'S
14 FINE.

15 BUT WITH RESPECT TO PEOPLE THAT ARE -- IF THEY WANT TO PUT
16 THEM IN WITH RESPECT TO DAN CORREA, TO THE EXTENT THAT HE WAS
17 A RULE 30(B) WITNESS, THEY ARE ABLE TO DO THAT. BUT
18 OTHERWISE, THEY ARE GOING TO HAVE TO SHOW THAT THESE PEOPLE
19 ARE UNAVAILABLE.

20 HOW DO WE FIGURE OUT WHETHER THEY ARE UNAVAILABLE FOUR
21 MONTHS BEFORE? YOU DO IT DURING TRIAL. AND SO THAT'S WHY I
22 DON'T THINK MR. BURSOR'S ARGUMENT HOLDS ANY WATER AT ALL.

23 **MR. BURSOR:** SO, YOUR HONOR, CAN I EXPLAIN WHY THAT
24 MAKES NO SENSE AT ALL?

25 **THE COURT:** LET ME TELL YOU, MR. BURSOR, I HAVE TRIED

1 A LOT OF CASES IN FEDERAL COURT, AND THIS IS THE FIRST TIME
2 THIS HAS COME UP. TYPICALLY WE ARE FIGHTING OVER WHETHER
3 SOMEONE IS AVAILABLE OR NOT.

4 **MR. BURSOR:** WELL, I'VE NOT TRIED AS MANY AS YOUR
5 HONOR, BUT I HAVE TRIED CASES IN FEDERAL COURT, TOO. YOUR
6 HONOR'S RULES REQUIRE --

7 **THE COURT:** I'M PULLING THEM UP RIGHT NOW.

8 (PAUSE IN THE PROCEEDINGS.)

9 **MR. BURSOR:** IT MAKES NO SENSE TO DESIGNATE VIDEO FOR
10 SOMEONE WHO IS GOING TO BE HERE.

11 **THE COURT:** OF COURSE IT DOES.

12 **MR. BURSOR:** YOU CAN'T PLAY VIDEO OF A WITNESS WHEN
13 THE WITNESS IS ON THE STAND UNLESS YOU ARE IMPEACHING THEM,
14 WHICH YOU DON'T HAVE TO DESIGNATE FOR IN THE FIRST PLACE. THE
15 ONLY REASON TO MAKE A DESIGNATION --

16 **THE COURT:** WHY -- LOOK, WHY ISN'T HE COMING LIVE?

17 **MR. BURSOR:** KIZER?

18 **THE COURT:** YES.

19 **MR. BURSOR:** BECAUSE WE HAVE WHAT WE NEED ON THE
20 VIDEO. WE DON'T NEED TO BRING HIM LIVE. IT IS HARDER TO
21 PRESENT THE EVIDENCE LIVE WHEN I HAVE A VIDEOTAPE THAT SAYS
22 EXACTLY WHAT I NEED.

23 **THE COURT:** HE CAN'T BE CROSS-EXAMINED.

24 **MR. BURSOR:** MR. --

25 **THE COURT:** HE CAN'T BE CROSS-EXAMINED. THAT'S THE

1 PROBLEM. WE DON'T -- THIS IS AN ALTERNATIVE MECHANISM FOR
2 PRESENTING EVIDENCE TO -- IN TRIAL.

3 **MR. BURSOR:** YOUR HONOR, THAT'S NOT CORRECT BECAUSE
4 HE CAN BE CROSS-EXAMINED. THE DEFENDANT HAD NOTICE OF THE
5 DEPOSITION AND THEY COULD ATTEND AND CROSS-EXAMINE HIM AT THE
6 DEPOSITION. THEY HAD AN OPPORTUNITY TO MAKE
7 COUNTERDESIGNATIONS, WHICH THEY DID NOT DO. AND THEY HAD AN
8 OPPORTUNITY TO MAKE THESE OBJECTIONS, WHICH THEY DID NOT
9 OBJECT. SO ALL OF THIS SHOULD HAVE HAPPENED MONTHS AGO. IT
10 WAS ALL WAIVED.

11 AND IF THEY WANT TO SUBPOENA HIM FOR FRIDAY, THAT DOESN'T
12 HELP ME BECAUSE I WANT TO PUT HIM ON TOMORROW BY VIDEO. NOW,
13 IF THEY WANT TO CROSS-EXAMINE HIM ON FRIDAY, IF THEY CAN GET
14 HIM HERE, FINE. BUT I DON'T HAVE TO GET HIM HERE. I CAN PLAY
15 THE VIDEO.

16 **MR. ELLIS:** SO MY RESPONSE IS, AND, AGAIN, LET ME
17 JUST ADD TO THE LITANY HERE. I'VE TRIED A LOT OF CASES IN
18 FEDERAL COURT, NEVER -- AND STATE COURT. IF THERE HAD BEEN
19 SOME SORT OF INDICATION THAT THIS TRIAL WAS GOING TO BE PUT ON
20 IN ABSENTIA WITH ALL THE WITNESSES, THEN IT SHOULD HAVE BEEN
21 DISCLOSED.

22 **THE COURT:** IT'S NOT AS IF YOU DIDN'T KNOW. THOSE
23 WERE THERE. I HAVE ALSO HAD PEOPLE SAY, HEY, WE OBJECT
24 BECAUSE THEY HAVEN'T MADE A SHOWING. THIS HAS BEEN THE
25 PROBLEM IN PART WITH THIS CASE.

1 **MR. BURSOR:** YOUR HONOR, IF I MAY?

2 **THE COURT:** NO. WAIT.

3 (PAUSE IN THE PROCEEDINGS.)

4 **THE COURT:** WHAT? MR. BURSOR, YOU WANT TO SAY
5 SOMETHING?

6 **MR. BURSOR:** YES, YOUR HONOR.

7 YOUR HONOR HAS RULES ABOUT WHEN THINGS GET DISCLOSED PRIOR
8 TO TRIAL, AND WE FOLLOWED THOSE RULES. THE RULES SAY DISCLOSE
9 YOUR DEPOSITION DESIGNATIONS AT A CERTAIN TIME. WE DID THAT.
10 THE RULES SAY OBJECTIONS HAVE TO COME IN AT A CERTAIN TIME.
11 AND THERE WERE NO OBJECTIONS.

12 AND SO TO SAY NOW THAT WE CAN'T PLAY THE VIDEO OF WHAT WAS
13 DESIGNATED AND NOT OBJECTED TO WOULD BE THE SAME THING AS
14 STRIKING OUR -- THE DESIGNATIONS THAT WE MADE BACK IN JANUARY.
15 AND THAT'S NOT FAIR.

16 WE FOLLOWED THE RULES. WE TIMELY MADE THE DESIGNATIONS.
17 THERE CAN BE NO REASON TO MAKE THOSE DESIGNATIONS OTHER THAN
18 TO PLAY THE VIDEO AT THE TRIAL. YOU DON'T NEED DESIGNATIONS
19 IF THE WITNESS IS HERE. YOU CAN IMPEACH HIM WITH ANYTHING ON
20 THE VIDEO. AND IF THE WITNESS IS HERE, YOU CAN'T PLAY
21 ANYTHING THAT DOESN'T IMPEACH HIM. SO IF YOU SAY WE CAN'T
22 PLAY THE VIDEO --

23 **THE COURT:** THIS IS A REPEAT OF WHAT YOU JUST SAID.

24 **MR. BURSOR:** OKAY.

25 **THE COURT:** IS THERE ANYTHING NEW?

1 **MR. BURSOR:** THAT'S IT.

2 **THE COURT:** ANY RESPONSE?

3 **MR. ELLIS:** SAME ARGUMENT.

4 **THE COURT:** ALL RIGHT. THE OBJECTION IS OVERRULED.
5 I'M LOOKING AT MY RULE. YOU SHOULD HAVE RAISED THE ISSUE.
6 THEY CAN PLAY THEM.

7 NEXT. YOU CAN BRING 'EM IN LIVE, TOO, OBVIOUSLY.

8 **MR. ELLIS:** RIGHT.

9 **THE COURT:** I SAID TO DESIGNATE THEM. I SAID TO MEET
10 AND CONFER. IF YOU HAD ISSUES, YOU SHOULD HAVE RAISED IT.

11 **MR. ELLIS:** I JUST WANT TO MAKE THIS CLEAR FOR THE
12 RECORD THOUGH. 32(A), IN TERMS OF WHETHER SOMEONE IS GOING TO
13 BE AVAILABLE, I JUST DON'T KNOW HOW I WAS SUPPOSED TO KNOW SIX
14 MONTHS AGO. SO I DON'T AGREE WITH YOUR RULING, BUT I'VE MADE
15 MY RECORD.

16 **THE COURT:** AND YOU COULD HAVE EASILY SAID -- YOU
17 KNOW, HE'S NOT A PARTY. SO YOU COULD HAVE EASILY SAID THAT
18 YOU WOULD OBJECT TO THE EXTENT -- LAWYERS HAVE DONE THIS.
19 OBJECT TO THE EXTENT THAT THE RULE -- THAT THEY HAVEN'T SHOWN
20 UNAVAILABILITY. I DON'T KNOW WHERE HE LIVES. I DON'T KNOW
21 WHERE --

22 **MR. ELLIS:** HE LIVES 48 MILES AWAY. SO HE'S WITHIN
23 THE HUNDRED MILES.

24 **THE COURT:** WELL, LIKE I SAID, I HAVEN'T -- YOU GUYS
25 HAVE HAD LOTS OF ISSUES, AND WE NEED TO GET THIS THING JUST

1 TRIED.

2 MR. ELLIS: IT DOES NEED TO BE TRIED. BUT THE
3 FAIRNESS GOES BOTH WAYS.

4 THE COURT: I DON'T DISAGREE THAT THE FAIRNESS NEEDS
5 TO GO BOTH WAYS, MR. ELLIS. I'M NOT TRYING TO PICK ON YOU.
6 BUT THE RULING IS WHAT THE RULING IS.

7 MR. ELLIS: RIGHT. I GET IT.

8 THE COURT: ALL RIGHT.

9 MR. BURSOR: SO ARE WE EXCUSED UNTIL 8:00 A.M.?

10 THE COURT: YES.

11 MR. BURSOR: THANK YOU, YOUR HONOR.

12 THE COURT: WE'LL SEE YOU THEN. THANK YOU.

13 WE ARE ADJOURNED FOR THE DAY.

14 (PROCEEDINGS CONCLUDED AT 1:18 P.M.)

15
16 **CERTIFICATE OF REPORTER**

17 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
18 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
19 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
20 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

21
22 

23 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

24 MONDAY, MAY 6, 2019